

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION,  

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THIS FILING RELATES TO:  
  
ALL ACTIONS.

) 22-MD-03047 YGR-PHK  
)  
) SAN FRANCISCO, CALIFORNIA  
)  
) MAY 23, 2024  
)  
) PAGES 1-122  
)  
)  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE PETER H. KANG  
UNITED STATES MAGISTRATE JUDGE

## A P P E A R A N C E S:

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APPEARANCES CONTINUED ON THE NEXT PAGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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10

11 ALSO PRESENT: ERICA KUBLY

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1 SAN FRANCISCO, CALIFORNIA

MAY 23, 2024

2 P R O C E E D I N G S

3 (COURT CONVENED AT 1:09 P.M.)

4 THE CLERK: NOW CALLING 22-MD-3047, IN RE: SOCIAL  
5 MEDIA LITIGATION.

6 COUNSEL, WHEN SPEAKING, PLEASE APPROACH THE PODIUMS AND  
7 STATE APPEARANCES FOR THE RECORD.

8 (PAUSE IN PROCEEDINGS.)

9 THE COURT: GOOD AFTERNOON.

10 ALL: GOOD AFTERNOON.

11 THE COURT: ALL RIGHT. WE'RE HERE ON, I THINK I  
12 COUNT, SIX DISCOVERY MOTIONS. I BELIEVE -- I'M GOING TO GROUP  
13 THEM. THE FIRST THREE I WILL HEAR IN ORDER BECAUSE THEY'RE  
14 ALL, CONCEPTUALLY AT LEAST, THE SAME. I'LL GIVE YOU THE DOCKET  
15 NUMBERS. DOCKET 800, 824, AND -- YEAH, THOSE TWO, 800 AND 824,  
16 WHICH BOTH CONCEPTUALLY DEAL WITH SCOPE OF DISCOVERY ON FOREIGN  
17 VERSIONS OF SERVICES.

18 SO LET'S START WITH -- BEFORE I START THERE, JUST SO YOU  
19 ALL KNOW, I'M HOPING WE END, YOU KNOW, RELATIVELY EARLY, BUT  
20 THERE'S A HARD CUTOFF AT ABOUT 3:30. SO ALLOCATE YOUR TIME  
21 AMONG YOUR COLLEAGUES AND YOURSELVES AND, YOU KNOW, BE  
22 SUCCINCT.

23 AND THERE'S NO NEED TO REPEAT ARGUMENTS THAT WERE MADE IN  
24 THE BRIEFS. I ASSURE YOU THE COURT HAS HAD AMPLE TIME TO  
25 REVIEW THE BRIEFING.

1 SO WHO'S GOING TO ARGUE -- LET'S START WITH 800. TIKTOK  
2 PLATFORM, 800.

3 MR. MURA: GOOD AFTERNOON, YOUR HONOR.

4 ANDRE MURA FOR THE PLAINTIFFS.

5 THE COURT: GOOD AFTERNOON.

6 MR. DRAKE: GOOD AFTERNOON, JUDGE.

7 GEOFFREY DRAKE, KING & SPALDING, FOR THE TIKTOK  
8 DEFENDANTS.

9 THE COURT: GOOD AFTERNOON.

10 SO IT SEEMS TO ME -- THE FIRST QUESTION I HAVE IS, UNLIKE  
11 SOME OF THE OTHER MOTIONS, IT WASN'T ENTIRELY CLEAR TO ME, AND  
12 I THINK TIKTOK RAISED IT, WHAT DOCUMENT REQUESTS ARE AT ISSUE  
13 IN THIS MOTION.

14 MR. DRAKE: THERE ARE NONE, YOUR HONOR.

15 MR. MURA: YOUR HONOR, THIS WAS A CROSS-CUTTING  
16 GLOBAL ISSUE WITH RESPECT TO -- TIKTOK TOOK THE POSITION THAT  
17 THERE COULD BE NO DISCOVERY WITH RESPECT TO CERTAIN PLATFORMS  
18 OUTSIDE OF THE U.S., AND OUR POSITION WAS THAT THE PLATFORM,  
19 TIKTOK, WAS NOT LAUNCHED IN 2017, BUT WAS DEVELOPED, BOTH IN  
20 TERMS OF ITS TECHNOLOGY AND ITS MARKETING, BEFORE THAT, AND  
21 THAT IMPLICATED TOUTIAO AND DOUYIN AND MUSICAL.LY, WHICH WERE  
22 THREE DIFFERENT APPS THAT ARE DISCUSSED IN THE MASTER COMPLAINT  
23 AND AT LENGTH IN --

24 THE COURT: BUT YOU DIDN'T REALLY ANSWER MY QUESTION.

25 AS I UNDERSTAND THE BRIEFING, YOU'RE FOCUSED ON TECHNICAL

1 FEATURES, MARKETING, AND I THINK HEALTH AND SAFETY ISSUES.

2 MR. MURA: YES.

3 THE COURT: THERE MUST BE SPECIFIC DOCUMENT REQUESTS  
4 THAT GO TO THOSE.

5 MR. MURA: THERE ARE, YOUR HONOR.

6 THE COURT: I MEAN, YOU SAW THEIR BRIEFING WHEN YOU  
7 PUT TOGETHER THE JOINT LETTER. WHY DIDN'T -- WHY HAVEN'T YOU  
8 IDENTIFIED AT LEAST WHICH DOCKET REQUESTS ARE AT ISSUE IN EACH  
9 OF THOSE BUCKETS?

10 MR. MURA: WE CAN, YOUR HONOR.

11 BUT I THINK IT GOES BEYOND JUST THE RFP'S, WHICH I HAVE A  
12 LIST HERE THAT I CAN READ OR I CAN PROVIDE TO DEFENDANTS.

13 BUT WE DID NOT DO IT IN OUR BRIEF BECAUSE WE VIEWED IT AS  
14 MORE OF A CROSS-CUTTING ISSUE THAT INVOLVED WITH -- THE  
15 RESPONSE FROM TIKTOK WAS, WE WON'T AGREE EVEN AS TO ALTERNATIVE  
16 DESIGN, KNOWLEDGE, NOTICE.

17 SO WE DIDN'T GO THROUGH THE PROCESS OF IDENTIFYING THE  
18 SPECIFIC RFP'S FOR THAT PURPOSE.

19 THE COURT: ALL RIGHT. OKAY.

20 WELL -- SO I'LL GIVE YOU A CHANCE, BUT BASED ON THE  
21 MATERIAL SUBMITTED TO ME -- I DON'T THINK IT IS CONFIDENTIAL,  
22 BUT YOU ALL TELL ME IF I SAY SOMETHING THAT'S CONFIDENTIAL --  
23 THERE'S EVIDENCE OF SAFETY FEATURES IN THE FRENCH VERSION.  
24 THERE'S EVIDENCE OF SOME SAFETY FEATURES IN THE CHINESE VERSION  
25 THAT ARE CURRENTLY NOT IMPLEMENTED IN THE UNITED STATES.

1 AND PLAINTIFFS MAKE THE POINT THAT SAFETY FEATURES THAT  
2 ARE IMPLEMENTED IN OTHER VERSIONS GO TO, AS FAR AS DISCOVERY  
3 GOES -- I'M NOT TALKING ABOUT THE MARKET -- GO TO AVAILABILITY  
4 OF ALTERNATIVE FEATURES, FEASIBILITY OF ALTERNATIVE SAFETY  
5 FEATURES, AND NOTICE; RIGHT?

6 MR. MURA: YES, YOUR HONOR.

7 THE COURT: AND I DIDN'T SEE A STRONG REBUTTAL TO  
8 THOSE SPECIFIC EXAMPLES, OTHER THAN A GENERALIZED ARGUMENT THAT  
9 THIS WASN'T RELEVANT.

10 AND SO I'LL TELL YOU, I'M NOT CONVINCED BY THE GENERALIZED  
11 ARGUMENT THAT THIS ISN'T RELEVANT, SO I'LL GIVE YOU A SHOT.

12 MR. DRAKE: SURE. I APPRECIATE THE OPPORTUNITY TO BE  
13 HEARD ON THAT.

14 FIRST OF ALL, YOUR HONOR, I THINK YOU HIT THE NAIL ON THE  
15 HEAD IN TERMS OF THE PROCEDURAL POSTURE THAT WE'RE HERE FOR.

16 I KNOW YOUR HONOR HAS DEALT WITH NUMEROUS DIFFERENT  
17 DISCOVERY DISPUTES, INCLUDING MOST RECENTLY IN THE CROCS CLASS  
18 ACTION LITIGATION INVOLVING REQUESTS BY PLAINTIFFS TO SEEK  
19 DISCOVERY OF NOT JUST THE PRODUCT THAT'S AT ISSUE IN THE  
20 LITIGATION, BUT OF OTHER PRODUCTS.

21 AND I KNOW YOUR HONOR IS VERY FAMILIAR WITH THE CASE LAW  
22 THAT UNDERSCORES THAT LINE OF REASONING AND THE SHOWING THAT A  
23 PLAINTIFF MUST MAKE TO GET DISCOVERY INTO OTHER PRODUCTS.

24 THERE'S REALLY NO DISPUTE HERE THAT WHETHER WE'RE TALKING  
25 ABOUT TOUTIAO, DOUYIN, OR PRODUCTS OR SERVICES THAT ARE TIKTOK

1 BRANDED IN OTHER COUNTRIES IN 150 REGIONS AND COUNTRIES AROUND  
2 THE WORLD, THAT THOSE ARE DIFFERENT PRODUCTS THAN THE TIKTOK  
3 PLATFORM IN THE UNITED STATES.

4 THE PLAINTIFFS HAVE NOT MADE A SHOWING THAT THEY ARE THE  
5 SAME PRODUCT, AND THEY CAN'T MAKE THAT SHOWING BECAUSE THEY'RE  
6 NOT THE SAME. INDEED, AT PARAGRAPH 560 OF THEIR MASTER  
7 COMPLAINT, THEY PLEAD THAT TIKTOK IS PROFOUNDLY DIFFERENT FROM  
8 THOSE OTHER SERVICES.

9 SO THAT'S THE FRAMEWORK IN WHICH WE APPROACH THE ISSUE TO  
10 START WITH.

11 AND YOUR HONOR IS AWARE, JUST LIKE IN THE VALENTINE CASE  
12 AND OTHERS, THAT WHEN A PLAINTIFF WANTS DISCOVERY INTO OTHER  
13 PRODUCTS, AS YOU HINTED TO EARLIER, THEY TYPICALLY SERVE A  
14 SERIES OF TARGETED DOCUMENT REQUESTS ABOUT THAT PRODUCT.

15 HERE THEY HAVE NOT DONE THAT. THEY'VE TAKEN THE APPROACH  
16 THAT ALL 300 OF THEIR DOCUMENT REQUESTS RELATE NOT JUST TO  
17 TIKTOK IN THE UNITED STATES, BUT TO ALL OF THE OTHER PLATFORMS  
18 THAT I JUST MENTIONED, NOT JUST THE 150 OTHER VERSIONS OF  
19 TIKTOK AROUND THE WORLD, BUT DIFFERENT PRODUCTS THAT ARE  
20 AVAILABLE ONLY IN CHINA, ONLY TO CHINESE INDIVIDUALS THAT THE  
21 PLAINTIFFS HERE DID NOT USE AND HAVE NO ALLEGATION THAT THEY  
22 USED.

23 SO THE BURDEN IS ON THE PLAINTIFF THEN TO ESTABLISH  
24 SUBSTANTIAL SIMILARITY BETWEEN THE TIKTOK PLATFORM IN THE  
25 UNITED STATES AND THESE OTHER SERVICES, AND RESPECTFULLY, YOUR

1 HONOR, THEY HAVE NOT MADE THAT SHOWING. THEY HAVE NOT OFFERED  
2 ANY AFFIDAVITS. THERE ARE NO EXPERT REPORTS. ALL THEY DID WAS  
3 ATTACH THE LOGOS AND PASTE THEM INTO THEIR BRIEFS, WHICH WE  
4 ADDRESSED.

5 THE COURT: WELL, THEY CITED DOCUMENTS. THERE'S,  
6 WHAT, THERE'S A -- THE TIKTOK BOOM ARTICLE AND THIS INTERNET  
7 POLICY ARTICLE WHICH IS -- STATED THAT THE DEVELOPMENT IS -- I  
8 THINK ONE OF THEM SAYS IT'S A ONE-SIZE-FITS-ALL FOR WORLDWIDE  
9 DISTRIBUTION OF IT, AND THERE'S REFERENCE TO -- I WON'T USE THE  
10 NAME -- BUT THERE'S REFERENCE TO AN OFFICE IN BEIJING THAT'S  
11 USED FOR WORLDWIDE CROSS-PLATFORM DISTRIBUTION OF DIFFERENT  
12 VERSIONS --

13 MR. DRAKE: SURE.

14 THE COURT: -- AND DIFFERENT SERVICES.

15 AND SO THE ARGUMENT THAT THEY HAVEN'T MADE ANY SHOWING I  
16 THINK ARGUES TOO MUCH BECAUSE THEY -- AGAIN, YOU DIDN'T REALLY  
17 ADDRESS THOSE SPECIFIC ARTICLES THAT THEY CITED AND THE  
18 EVIDENCE THEY PROVIDED.

19 MR. DRAKE: WELL, RESPECTFULLY, YOUR HONOR, I THINK  
20 WE DID ADDRESS THOSE DOCUMENTS IN THE TWO AND A HALF PAGES THAT  
21 WE HAD.

22 I KNOW YOUR HONOR DOESN'T HAVE THE UNDERLYING DOCUMENTS  
23 THEMSELVES. WE'RE HAPPY TO FURNISH THEM TO THE COURT BECAUSE  
24 THEY, FRANKLY, DON'T SAY WHAT THE PLAINTIFFS CLAIM THEY SAY.

25 FOR EXAMPLE, THE ONE DOCUMENT THAT THEY CITE -- THIS IS AT

1           BATES, ENDING IN BATES 9828, WHICH IS AN EXCERPT OF THE CEO OF  
2           TIKTOK, INC.'S TESTIMONY BEFORE CONGRESS, THEY ONLY CITE THE  
3           FIRST HALF OF THE QUOTATION.

4           THE SECOND HALF OF THE QUOTATION SAYS, "TIKTOK'S BUSINESS  
5           LOGIC ALGORITHM, INTEGRATION, AND DEVELOPMENT OF SYSTEMS IS  
6           SPECIFIC TO THE TIKTOK APPLICATION AND SEPARATE FROM DOUYIN."

7           AS TO THE ARTICLE THAT YOUR HONOR MENTIONED AS WELL, AND I  
8           DON'T WANT TO PRESUME THAT YOUR HONOR DIDN'T HAVE A CHANCE TO  
9           FIND THAT ARTICLE SOMEWHERE ON THE INTERNET, BUT IT TALKS ABOUT  
10          ONE OF THE STUDIES' FINDINGS IS THAT THE DOUYIN APP HAS SEVERAL  
11          DIFFERENT FEATURES THAT ARE PARTICULAR TO THE CHINESE MARKET  
12          AND REGULATION, AND IT SAYS THE CHINESE, DOMESTIC AND  
13          INTERNATIONAL VERSIONS OF THE SAME APP VARY IN DATA PRIVACY  
14          PROTECTION STANDARDS AND IN OTHER WAYS.

15          SO WE OBVIOUSLY, IN OUR BRIEFING, ADDRESSED SOME OF THAT.  
16          WE DIDN'T ADDRESS EVERY SINGLE DOCUMENT THAT THEY CITED.

17          WE CAN DO SO, YOUR HONOR, AND WE -- IN FACT, I HAVE A  
18          CHART WITH ME IN WHICH WE'VE GONE THROUGH EVERY SINGLE DOCUMENT  
19          THAT THEY CITED IN THEIR BRIEF AND WE'VE ARTICULATED, FOR OUR  
20          OWN WORK PRODUCT, WHY THAT DOCUMENT DOESN'T ACTUALLY REPRESENT  
21          AND STAND FOR THE PROPOSITION THAT THE PLAINTIFFS CLAIM THAT  
22          THEY DO.

23          I THINK THE FUNDAMENTAL PROBLEM HERE, YOUR HONOR, IS THAT  
24          THE PLAINTIFFS WANT TO TRY TO GET INTO DISCOVERY OF OTHER  
25          PRODUCTS, OTHER SERVICES OTHER THAN THE TIKTOK PRODUCT.

1           AT MINIMUM THEY SHOULD HAVE TO SERVE SPECIFIC, TAILORED  
2 DOCUMENT REQUESTS THAT IDENTIFY WHAT IT IS THAT THEY'RE LOOKING  
3 FOR, WHAT IS IT ABOUT DOUYIN --

4           THE COURT: SO HAVE YOU SERVED DOCUMENT REQUESTS THAT  
5 ARE SPECIFIC TO THE 14 OR SO NAMED FEATURES THAT YOU IDENTIFY  
6 IN THE BRIEF?

7           MR. MURA: WE HAVE, YOUR HONOR.

8           THE COURT: FOR EACH -- HAVE THEY SERVED DOCUMENT  
9 REQUESTS SAYING THIS IS THE -- LIKE, NAMED FEATURE, LIKE AGE  
10 VERIFICATION.

11           MR. MURA: WE'VE SERVED DOCUMENT REQUESTS RELATED TO  
12 THE NAMED FEATURES. THEY'RE NOT BROKEN DOWN BY THE COMPANIES,  
13 WHICH IS WHAT I TAKE THE SUGGESTION TO BE.

14           BUT IF WE HAD DONE THAT, I BELIEVE THAT THE RESPONSE WOULD  
15 HAVE BEEN, WE WON'T AGREE TO DISCOVERY ON THAT.

16           I DON'T THINK IT WAS A FOOT FAULT ON OUR PART BY NOT  
17 SERVING A DISCOVERY REQUEST THAT SPECIFICALLY NAMED THESE  
18 COMPANIES. IF THAT'S THE HURDLE, WE CAN CERTAINLY DO THAT.  
19 BUT I THINK WE'LL BE RIGHT BACK HERE ARGUING IT.

20           THE COURT: NOT ON THAT.

21           DO THE DOCUMENT REQUESTS SAY -- GIVE ME A NAMED FEATURE, I  
22 BELIEVE --

23           MR. DRAKE: AGE VERIFICATION.

24           THE COURT: IS THERE A DOCUMENT THAT SAYS, WE WANT  
25 TECHNICAL DOCUMENTS, HOWEVER YOU DESCRIBE IT, ON AGE

1 VERIFICATION?

2 MR. MURA: YES. THE WAY THE DOCUMENT REQUESTS WORK  
3 IS THEY HAVE NAMED FEATURES AS A DEFINED TERM, AND THEY INCLUDE  
4 A LIST OF THEM, AND THEN THEY REQUEST INFORMATION ABOUT NAMED  
5 FEATURES.

6 SO RFP 160 TO 166 IS ABOUT BYTEDANCE'S RESEARCH,  
7 DEVELOPMENT, AND DESIGN AND IMPLEMENTATION OF ANY ALTERNATIVE  
8 SAFER DESIGNS FOR NAMED FEATURES.

9 SO THAT WOULD CAPTURE THE INFORMATION THAT WE'RE  
10 DISCUSSING TODAY.

11 MR. DRAKE: BUT, YOUR HONOR, EVEN IF THE COURT WERE  
12 TO PERMIT DISCOVERY INTO OTHER PRODUCTS, FOR EACH OF THOSE  
13 DOCUMENT REQUESTS, THERE WOULD HAVE TO BE A SHOWING OF  
14 SUBSTANTIAL SIMILARITY AS TO WHY THE NAMED FEATURE, IN THIS  
15 CASE I'LL SAY AGE VERIFICATION, IS SIMILAR ENOUGH BETWEEN THE  
16 DOUYIN PLATFORM OR THE TOUTIAO PLATFORM AND TIKTOK IN THE  
17 UNITED STATES.

18 AND WE WOULD SUBMIT THAT SIMPLY CITING A HALF OF A  
19 SENTENCE WHERE THEY'VE SAID THEY HAVE THE BASIC UNDERLYING  
20 ARCHITECTURE IS INSUFFICIENT.

21 TWO TIRES, BOTH ARE MADE OF RUBBER, BUT THAT DOESN'T MEAN  
22 THAT IN A CASE INVOLVING A DEFECTIVE TIRE, ONE HAS AN  
23 OPPORTUNITY TO TAKE FULL SCALE DISCOVERY INTO ANOTHER TIRE. IN  
24 FACT, WE CITE CASES THAT STAND FOR THAT PROPOSITION IN OUR  
25 PAPERS.

1           THE POINT IS THAT THIS IS A WILD OVERREACH IN A CASE WHERE  
2           WE HAVE SEVEN MONTHS LEFT TO CONDUCT DISCOVERY. WE'RE ONLY  
3           JUST STARTING THIS DISCOVERY AS TO ONE PLATFORM, TIKTOK IN THE  
4           UNITED STATES. THAT'S WHAT THESE PLAINTIFFS USED. THAT'S  
5           WHAT'S ALLEGEDLY DEFECTIVE. THAT'S WHAT GIVES RISE TO THEIR  
6           CLAIMS.

7           THE PLAINTIFFS NOW WANT TO APPLY, I THINK, ALL OF THEIR  
8           DOCUMENT REQUESTS, AT LEAST THOSE THAT RELATE TO SPECIFIC  
9           FEATURES, ALTHOUGH THAT HAS NOT BEEN NARROWED OR ARTICULATED AS  
10          TO WHICH EXACT ONES THOSE ARE, TO ALL OF THE OTHER PLATFORMS.  
11          THAT WOULD BE A MONUMENTAL UNDERTAKING, A TREMENDOUS TASK THAT  
12          I DON'T BELIEVE WE HAVE TIME TO DO, AND I DON'T --

13           THE COURT: YOU'RE MOVING ON TO RELEVANCE FROM  
14          BURDEN. SO LET ME STICK TO RELEVANCE.

15           SO I'M PRIMARILY FOCUSSSED ON -- HELP ME PRONOUNCE IT.  
16          TOUTIAO?

17           MR. MURA: TOUTIAO.

18           MR. DRAKE: IT IS PRONOUNCED TOUTIAO.

19           THE COURT: YOU BOTH SAID IT DIFFERENTLY.

20           MR. DRAKE: I BELIEVE IT'S PRONOUNCED TOUTIAO.

21           THE COURT: ALL RIGHT. SO I'M PRIMARILY, FOR PRESENT  
22          PURPOSES, FOCUSSSED ON TOUTIAO AND -- DOUYIN?

23           MR. DRAKE: DOUYIN.

24           THE COURT: ALL RIGHT. I DO -- SO IF -- GIVEN THAT  
25          THERE ARE DOCUMENT REQUESTS SPECIFIC TO THE TECHNICAL REQUESTS

1 FOR IMPLEMENTATION OF NAMED FEATURES OR ALTERNATIVES TO THEM, I  
2 DO THINK, A, THAT'S SPECIFIC ENOUGH AND IT'S NOT SO WIDE  
3 RANGING AS TO BE OUT OF BOUNDS IN TERMS OF RELEVANCE AND  
4 PROPORTIONALITY.

5 YOU'RE ARGUING A LITTLE BIT TOO MUCH ABOUT THE DIFFERENCE  
6 BETWEEN THE PRODUCTS, BECAUSE I THINK PART OF PLAINTIFFS'  
7 THEORY IS THAT SOME OF THOSE DIFFERENCES MAKE A DIFFERENCE HERE  
8 SUBSTANTIVELY, RIGHT, AND IF YOU KEEP HARPING ON THE  
9 DIFFERENCES BETWEEN THE PRODUCTS, THEY -- AT SOME LEVEL IT  
10 EMPHASIZES THEIR POINT, THAT THERE ARE FEATURES IN THE OTHER  
11 PLATFORMS THAT COULD HAVE BEEN IMPLEMENTED IN THE U.S., BUT  
12 WEREN'T; RIGHT?

13 MR. DRAKE: THAT'S TRUE. BUT, OF COURSE, THEY  
14 ALREADY ARE ALLEGING THAT AND THEY ALREADY ARE CLAIMING THEY  
15 KNOW THAT. WHAT DO THEY NEED TO GO INTO VAST DISCOVERY INTO  
16 OTHER PRODUCTS?

17 THE COURT: BUT THERE ARE LOTS OF THINGS THAT  
18 PLAINTIFFS KNOW FROM THEIR OWN INVESTIGATION THEY'RE ENTITLED  
19 TO. JUST BECAUSE THEY DID THEIR OWN INVESTIGATION DOESN'T MEAN  
20 THEY DON'T GET DISCOVERY INTO IT.

21 MR. DRAKE: SURE.

22 WE ALSO SUBMIT THAT'S A LEGALLY FAR ARGUMENT, YOUR HONOR,  
23 THAT YOU CAN BASE A DESIGN DEFECT CLAIM BASED ON THE DESIGN OF  
24 ANOTHER PRODUCT. WE CITE NUMEROUS CASES, PARTICULARLY FROM THE  
25 PHARMACEUTICAL CONTEXT, IN OUR PAPERS THAT REFUTE THAT POINT.

1 PLAINTIFFS HAVEN'T RESPONDED TO THOSE CASES OR ADDRESSED THEM  
2 OTHERWISE.

3 SO FOR THOSE TO BE OPENING THE DOOR TO WHAT WE BELIEVE IS  
4 PRETTY WIDE RANGING DISCOVERY INTO OTHER ISSUES, WE THINK  
5 THAT'S A REAL PROBLEM, YOUR HONOR, AND THAT'S WHY I'M HERE  
6 TODAY.

7 THE COURT: I'LL GIVE YOU A CHANCE TO RESPOND TO THE  
8 LEGAL ISSUE.

9 MR. MURA: YOUR HONOR, THEY CITE MOSTLY SECURITIES  
10 CASES THAT ARE INAPPOSITE, AND WE CITED KIRKSEY AGAINST  
11 SCHINDLER ELEVATORS, WHICH SAYS ADMISSIBILITY OF FOREIGN  
12 DESIGNS IS AN EXTENSION OF THE WIDELY ACCEPTED PREMISE THAT  
13 EVIDENCE OF ALTERNATIVE DESIGNS USED IN A MARKETPLACE ARE  
14 ADMISSIBLE TO SHOW FEASIBILITY.

15 SO THAT GOES DIRECTLY TO OUR POINT ABOUT IF THERE'S A  
16 MARKETPLACE WHERE THEY'RE USING SIMILAR OR DIFFERENT DESIGNS,  
17 THAT'S A BASIS FOR EXPLORATION FOR PLAINTIFFS.

18 MR. DRAKE: EXCEPT FOR THE KIRKSEY CASE INVOLVES I  
19 BELIEVE IT WAS AN ESCALATOR, OR ELEVATOR, AND IT'S THE SAME  
20 ESCALATOR IN EUROPE AS USED IN THE UNITED STATES AND THERE ARE  
21 DIFFERENT SAFETY FEATURES APPLIED TO IT.

22 WE'RE TALKING ABOUT HERE SEVERAL FUNDAMENTALLY DIFFERENT  
23 SERVICES. THEY'RE JUST DIFFERENT PRODUCTS, AND THE PLAINTIFFS  
24 HAVEN'T MADE THE FUNDAMENTAL SHOWING THAT ONE NEEDS TO MAKE TO  
25 SHOW THEY'RE THE SAME.

1                   THAT'S ESPECIALLY TRUE, YOUR HONOR -- THERE SHOULD BE NO  
2                   DOUBT ABOUT IT AT ALL WITH RESPECT TO TOUTIAO BECAUSE THEY DO  
3                   ONLY CITE ONE DOCUMENT IN THEIR BRIEF ABOUT TOUTIAO AND THE  
4                   DOCUMENT DOESN'T SAY ANYTHING ABOUT TOUTIAO. IT'S NOT IN THE  
5                   DOCUMENT.

6                   THE COURT: I'M REALLY MORE EMPHASIZING THE CITATION  
7                   TO THE JIA ARTICLE FROM THE 9 INTERNET POLICY REVIEW,  
8                   INDEPENDENT ANALYSIS OF SOURCE CODE FOUND THAT DOUYIN IS JUST  
9                   THE CHINESE VERSION OF TIKTOK. AND ALSO -- THIS IS THE ONE I  
10                  REFERENCED EARLIER -- THE ARTICLE BY CHRIS STOKEL-WALKER FROM  
11                  CANBURY PRESS, TIKTOK BOOM, ET CETERA. IT SAYS, BYTEDANCE'S  
12                  "TECHNOLOGIES TRANSCEND GEOGRAPHICAL BOUNDARIES." BYTEDANCE  
13                  "DEVELOPS ITS SOFTWARE AS A ONE-SIZE-FITS-ALL PRODUCT TO BE  
14                  USED AROUND THE WORLD."

15                  BASED ON -- THOSE ARE, IN MY MIND, SUFFICIENT BASES TO GET  
16                  THE DISCOVERY FROM -- ON THE NAMED FEATURES FROM DOUYIN AND --

17                  MR. MURA: TOUTIAO.

18                  THE COURT: -- TOUTIAO.

19                  MR. DRAKE: CAN I MAKE ONE MORE POINT ON THAT, YOUR  
20                  HONOR, WHICH IS THAT TOUTIAO IS NOT IN THE BOOK OR IN THE QUOTE  
21                  THAT YOU JUST READ. TOUTIAO IS NOT INVOLVED. THAT'S A NEW  
22                  AGGREGATOR SERVICE. IT'S NOT WHAT THOSE DOCUMENTS TALK ABOUT.

23                  MY PARTNER, MR. SENTENAC, HAS TIKTOK BOOM WITH HIM IF YOUR  
24                  HONOR WOULD LIKE TO HAVE A COPY OF IT TO READ IT.

25                  IT'S NOT DISCUSSED IN THE BOOK. THEY MISREPRESENTED THE

1 DOCUMENT, YOUR HONOR, AND WE'D LIKE AN OPPORTUNITY AT MINIMUM  
2 TO BRIEF THE ISSUE IN A MORE FULSOME WAY BEFORE THIS ISSUE GETS  
3 EXPANDED AND WE ENTER INTO A WORLD OF DISCOVERY CONCERNING  
4 OTHER PRODUCTS THAT ARE AVAILABLE ONLY IN OTHER COUNTRIES, NOT  
5 TO AMERICAN USERS.

6 THE COURT: AGAIN, THIS IS JUST FOR PURPOSES OF  
7 DISCOVERY, NOT FOR THE MERITS. I MAKE NO PASSING ON WHETHER  
8 ANYTHING HERE IS GOING TO TIP THE BALANCE ON THE MERITS.

9 BUT FOR THE -- EVIDENCE THAT'S BEEN PRESENTED TO ME -- AND  
10 I'M AVOIDING SPEAKING OF THE CONFIDENTIAL DOCUMENTS -- PROVIDE  
11 ENOUGH OF A BASIS TO CONVINCE ME THAT -- HERE'S WHAT I -- THAT  
12 THEY'RE ENTITLED TO THE DISCOVERY.

13 HOWEVER, IT DOES BOTHER ME THAT YOU HAVEN'T IDENTIFIED THE  
14 EXACT DOCUMENT REQUESTS AT ISSUE, SO YOU'VE GOT TWO DAYS --

15 MR. MURA: YES, YOUR HONOR.

16 THE COURT: -- TO MEET AND CONFER WITH OPPOSING  
17 COUNSEL AND IDENTIFY THE SPECIFIC DOCUMENT REQUESTS THAT THIS  
18 RULING APPLIES TO, AND IT SHOULD ONLY BE DOCUMENT REQUESTS  
19 ASKING FOR TECHNICAL, RIGHT, TECHNICAL AND IMPLEMENTATION TYPE  
20 DOCUMENTS. IT'S NOT WIDE RANGING DISCOVERY THAT MAY  
21 INTANGENTIALLY TOUCH ON THE FEATURES, BECAUSE YOUR ARGUMENT IS  
22 IT'S RELEVANT TO HOW THEY IMPLEMENTED AND WHAT THEY THOUGHT  
23 ABOUT HOW THEY'RE IMPLEMENTING THOSE FEATURES, OR NOT,  
24 OVERSEAS. SO IT'S GOT TO BE LIMITED TO THE NAMED FEATURES IN  
25 THE CASE.

1           ALSO, I TAKE DEFENDANTS' POINT, IN THIS BRIEF AND I THINK  
2           IN OTHERS, ALGORITHMS ARE OUT. OKAY? SO NO -- IT LOOKS TO ME  
3           LIKE A.I. ALGORITHMS FROM THE MOTION TO DISMISS ORDER, ANYTHING  
4           THAT TOUCHES ON SECTION 230 AND PUBLICATION, YOU CAN'T TAKE  
5           DISCOVERY ON TECHNICAL FEATURES THAT, IN THE MOTION TO DISMISS  
6           ORDER, HAVE BEEN RULED OUTSIDE OF THE CASE.

7           MR. DRAKE: THAT'S RIGHT, YOUR HONOR.

8           THE COURT: DO I MAKE MYSELF CLEAR ON THAT?

9           MR. MURA: I BELIEVE YOUR HONOR'S PREVIOUS COUNSEL ON  
10          THAT WAS THAT ALGORITHMS WERE IN BECAUSE OF THE COURT'S RULING  
11          WITH RESPECT TO FAILURE TO WARN, AND WE CITED THAT ASPECT OF  
12          THE TRANSCRIPT TO THE COURT IN ITS LAST ORDER.

13           THE COURT: THE FAILURE TO WARN IS NOT -- YOU DON'T  
14          NEED THE TECHNICAL DOCUMENTS FOR FAILURE TO WARN.

15           I'M FOCUSED ON THE TECHNICAL DOCUMENTS HERE BECAUSE  
16          FAILURE TO WARN IS -- THAT'S FAILURE TO WARN, EXTERNAL  
17          COMMUNICATIONS; RIGHT?

18           MR. MURA: WELL, WE'VE PUT SOURCE CODE TO THE SIDE  
19          ANYWAY, SO I THINK THAT'S NOT GOING TO BE AN ISSUE.

20           BUT WE HAVE CERTAINLY -- JUDGE GONZALEZ ROGERS HERSELF HAS  
21          SAID THAT THIS IS WITHIN THE SCOPE OF DISCOVERY, AND THE  
22          COURT'S STATEMENTS AT THE LAST -- I DON'T KNOW IF IT WAS THE  
23          LAST CMC OR BEFORE THAT WHEN THE COURT GAVE GUIDANCE AND LOOKED  
24          AT THE MOTION TO DISMISS ORDER, DID SAY THAT THIS WAS IN  
25          BECAUSE OF THE FAILURE TO WARN.

1                   THE COURT: AGAIN, I'M FOCUSED ON THE TECHNICAL  
2 IMPLEMENTATION. I DON'T UNDERSTAND WHY YOU NEED TECHNICAL  
3 IMPLEMENTATION DOCUMENTS FOR A FAILURE TO WARN CLAIM.

4                   MR. MURA: WELL, IT -- IF THAT'S ALL YOU'RE SAYING, I  
5 THINK THAT'S DIFFERENT THAN PERHAPS WHAT I HEARD, AND MAYBE I  
6 JUST MISHEARD ABOUT THE ALGORITHMS BEING IN OR OUT, BECAUSE THE  
7 ALGORITHMS ARE NOT OUT SORT OF ON A GLOBAL LEVEL.

8                   BUT I --

9                   THE COURT: THEY'RE OUT FOR PURPOSES OF TECHNICAL  
10 IMPLEMENTATION DOCUMENTS, WHICH I WANT YOU TO IDENTIFY THOSE  
11 THAT ARE AT ISSUE. DOCUMENTS THAT GO TO -- BECAUSE YOU'RE --  
12 YOU APPEAR TO BE FOCUSED ON HOW THEY IMPLEMENT THESE FEATURES  
13 OR NOT IMPLEMENT THEM, OR FOR IMPLEMENTING WHAT YOU THINK ARE  
14 ALTERNATIVES TO FEATURES IN THESE OTHER SERVICES; RIGHT?

15                   TO ME, THOSE ARE TECHNICAL DOCUMENTS AND I DON'T SEE HOW  
16 THOSE GO TO FAILURE TO WARN.

17                   MS. HAZAM: YOUR HONOR, IF I MAY, LEXI HAZAM FOR  
18 PLAINTIFFS.

19                   I JUST WANT TO TRY TO CLARIFY YOUR HONOR'S UNDERSTANDING  
20 AND HOW IT MATCHES OURS, OR DOES NOT.

21                   IT IS OUR UNDERSTANDING THAT BOTH JUDGE GONZALEZ ROGERS  
22 AND YOUR HONOR PREVIOUSLY INDICATED THE SCOPE OF DISCOVERY IS  
23 NOT LIMITED TO THOSE FEATURES THAT SHE FOUND DID NOT, FOR  
24 PURPOSES OF A PRODUCT LIABILITY CLAIM ON ITS OWN, PASS MUSTER  
25 UNDER SECTION 230.

1                   HER OWN RULING STATES THAT A FAILURE TO WARN CLAIM DOES  
2                   BRING IN THOSE FEATURES, AND YOUR HONOR PREVIOUSLY, IN  
3                   ADDRESSING A SCOPE OF DISCOVERY ISSUE RAISED BY THE PARTIES,  
4                   FOUND THE SAME.

5                   FAILURE TO WARN TIES VERY CLOSELY TO KNOWLEDGE. SO  
6                   DEFENDANTS' KNOWLEDGE OF HOW THEIR PRODUCTS WORKED, HOW THEY'RE  
7                   DESIGNED, WHY THEY'RE DESIGNED THE WAY THEY ARE, WHAT THEY KNEW  
8                   WHEN ABOUT THEM GOES VERY MUCH TO FAILURE TO WARN.

9                   THE COURT: SO YOU HAD ME AT HOW THEIR PRODUCTS WORK  
10                  AND -- BUT HOW THEY'RE DESIGNED GOES TO FAILURE TO WARN?  
11                  BECAUSE THAT'S AN EXTERNAL -- FAILURE TO WARN IS AN EXTERNAL  
12                  ACTIVITY.

13                  MS. HAZAM: I DON'T THINK IT IS. FAILURE TO WARN,  
14                  WHETHER IT BE A DRUG CASE OR OTHERWISE, HAS TO DO WITH THE  
15                  KNOWLEDGE ABOUT THE PRODUCT THAT THE DEFENDANT HAD AT THE TIME  
16                  AND, THEREFORE, ITS OBLIGATION TO WARN REGARDING IT.

17                  SO IT IS VERY MUCH PLAINTIFFS' POSITION, IN KEEPING WITH  
18                  JUDGE GONZALEZ ROGERS'S ORDERS, THAT THE DESIGN AND THE REASONS  
19                  FOR THE DESIGN ARE HIGHLY RELEVANT TO PLAINTIFFS' FAILURE TO  
20                  WARN CLAIM.

21                  THE COURT: RESPONSE TO THAT?

22                  MR. DRAKE: WELL, YOUR HONOR, JUDGE GONZALEZ ROGERS  
23                  SAID AT PAGE 32 OF HER ORDER THAT THE ALGORITHMS ARE BARRED BY  
24                  230 AND, QUOTE, NO LONGER PART OF THE CASE.

25                  IT'S CLEAR, AND YOUR HONOR IS ALREADY ON TOP OF THE FACT,

1 AND THE PLAINTIFFS CAN'T ARTICULATE HOW THE ALGORITHM AT ALL  
2 RELATES TO THE FAILURE TO WARN, AND I THINK YOUR HONOR IS  
3 CORRECT.

4 THE PROBLEM IS THAT WHEN YOU TAKE THE ALGORITHM AND THE  
5 COMPARISONS TO THE ALGORITHM OUT OF THE PLAINTIFFS' BRIEF, THEY  
6 DON'T HAVE ANYTHING TO CONNECT DOUYIN TO THE TIKTOK PLATFORM IN  
7 THE UNITED STATES. THERE'S NOTHING SUBSTANTIALLY SIMILAR  
8 BETWEEN THE AGE VERIFICATION SYSTEM ON TOUTIAO AND DOUYIN IN  
9 CHINA, SUBJECT TO CHINESE LAW, REGULATIONS, STATUTES, PRIVACY  
10 CONCERNS, AND CUSTOMS, AND HAVE A SIMILARITY BETWEEN THAT AND  
11 WHAT IS USED HERE FOR TIKTOK IN THE UNITED STATES. THEY'RE  
12 SUBSTANTIALLY DIFFERENT. THEY'RE NOT SUBSTANTIALLY SIMILAR.

13 SO I'M CONCERNED, YOUR HONOR, THAT WHEN THEY GO BACK IN  
14 THE NEXT FEW DAYS AND SEND ME THIS LIST OF DOCUMENT REQUESTS,  
15 THEY'RE GOING TO BE ALL THE DOCUMENT REQUESTS THAT RELATE TO  
16 ALL THE ISSUES ABOUT TIKTOK, AND THEY'RE GOING TO SAY THEY  
17 APPLY ACROSS THE BOARD NOW TO THESE OTHER SERVICES.

18 THERE'S NO PROPORTIONALITY TO THAT, AND WE'RE  
19 SIGNIFICANTLY CONCERNED ABOUT WHAT THAT WOULD MEAN TO THE SCOPE  
20 OF DISCOVERY AND HOW WE WOULD EVEN GO ABOUT TRYING TO COMPLY  
21 WITH THAT PARTICULAR REQUIREMENT.

22 THE COURT: SO LET ME ADDRESS BURDEN.

23 ARE PLAINTIFFS VERY CLEAR -- I'LL BE VERY, VERY CLEAR TO  
24 ADDRESS THIS -- IT SHOULD NOT APPLY ACROSS THE BOARD. IF YOU  
25 SEND THEM A LIST OF EVERY SINGLE DOCUMENT REQUEST, OR 90

1 PERCENT OF THE DOCUMENT REQUESTS YOU'VE SERVED, TO ME THAT'S  
2 NOT PROPORTIONAL; RIGHT?

3 BECAUSE WHAT I'M HEARING, AND WHAT YOU BRIEFED, IS THAT  
4 YOU NEED TECHNICAL DISCOVERY ON HOW THESE FEATURES WERE  
5 IMPLEMENTED OR NOT IMPLEMENTED, AND THEIR ALTERNATIVES; RIGHT?

6 AND TO ME THAT'S A LIMITED SET. IT'S PROBABLY AT LEAST  
7 ONE, MAYBE -- IT'S EITHER 1 OR 14 DOCUMENT REQUESTS; RIGHT?  
8 YOU EITHER WANT ALL THE NAMED FEATURES IN ONE DOCUMENT REQUEST,  
9 OR YOU BROKE THEM OUT; RIGHT? SO IT SHOULD BE A LIMITED  
10 UNIVERSE OF DOCUMENT REQUESTS YOU ARE COMMUNICATING TO THE  
11 OTHER SIDE.

12 MS. HAZAM: YOUR HONOR, THAT'S UNDERSTOOD AND THAT'S  
13 OUR INTENT.

14 I THINK THE QUESTION AROSE WHEN YOUR HONOR REFERENCED THE  
15 ALGORITHM. IT IS A NAMED FEATURE.

16 AND WHILE COUNSEL SELECTIVELY CITED FROM  
17 JUDGE GONZALEZ ROGERS'S ORDER, THERE IS ANOTHER SECTION OF HER  
18 ORDER THAT WE QUOTED TO THIS COURT BEFORE, AND THIS COURT  
19 INVOKED BEFORE WHEN WE DISCUSSED SCOPE OF DISCOVERY, THAT SAYS  
20 THAT THE FAILURE TO WARN GOES TO ALL THE NAMED FEATURES. THE  
21 ALGORITHM IS ONE OF THEM.

22 SO IT WASN'T A MATTER OF YOUR HONOR'S DIRECTIVE TO US TO  
23 SELECT THE RFP'S THAT MATCH YOUR HONOR'S, YOU KNOW,  
24 UNDERSTANDING OF THIS DISPUTE. WE ARE PREPARED TO DO THAT. IT  
25 WILL NOT BE ALL RFP'S.

1           BUT IT WAS THE NOTE OF THE ALGORITHM THAT RAISED THIS  
2 ISSUE FOR US.

3           THE COURT: ABOUT HOW MANY RFP'S DO YOU THINK IT'S  
4 GOING TO BE? IS IT 1 OR 14?

5           MR. MURA: IT'S GOING TO BE MORE THAN THAT, YOUR  
6 HONOR.

7           AND THERE'S ONE ASPECT OF THE COURT'S RULING THAT I WAS  
8 GOING TO ASK ABOUT, BECAUSE YOU FOCUSED ON TECHNICAL  
9 DOCUMENTS, WHICH WE APPRECIATE, BUT THERE WAS ANOTHER ASPECT  
10 WHICH DEALT WITH MARKETING, BECAUSE MUSICAL.LY, WHICH WAS TAKEN  
11 OVER BY TIKTOK, WAS CENTRAL TO SORT OF THE MARKETING OF YOUTH,  
12 AND SO THAT WOULD BE AN IMPORTANT ASPECT OF SORT OF OUR  
13 DISCOVERY.

14           SO AS LONG AS WE HAVE BOTH THOSE TECHNICAL RFP'S AND THE  
15 MARKETING PIECE, THEN I THINK WE'RE --

16           THE COURT: IT'S TWO RFP'S.

17           MR. MURA: I'M SORRY?

18           THE COURT: IT'S TWO RFP'S, ONE THAT ASKS FOR ALL THE  
19 NAMED FEATURES TECHNICALLY, AND ALL THE MARKETING RELATED TO  
20 THE NAMED FEATURES.

21           MR. MURA: NO, I DON'T KNOW THAT THEY'RE BROKEN DOWN  
22 AS TO TWO SPECIFIC RFP'S.

23           I'M JUST TALKING ABOUT A DIFFERENT CATEGORY OF INFORMATION  
24 THAT THE COURT DIDN'T TALK ABOUT, WHICH WAS THE MARKETING PIECE  
25 OF IT.

1                   MR. DRAKE: AND I BELIEVE RELATING TO MUSICAL.LY,  
2 WHICH ISN'T EVEN PART OF THIS MOTION, SO IT'S UNCLEAR HOW THIS  
3 IS BEING BROUGHT IN NOW.

4                   THE COURT: LET ME CLOSE THE LOOP ON TECHNICAL  
5 DOCUMENTS, OKAY? IS MY RULING CLEAR ON THAT, MY DIRECTIVE ON  
6 THAT?

7                   MR. DRAKE: I BELIEVE I UNDERSTAND YOU TO DIRECT TO  
8 THE PLAINTIFFS THAT THEY CAN RESERVE OR POINT US IN THE  
9 DIRECTION OF --

10                  THE COURT: NOT RESERVE, IDENTIFY FOR YOU  
11 SPECIFICALLY WHICH RFP'S CAPTURE THE TECHNICAL DOCUMENTS THEY  
12 WANT FOR THE IMPLEMENTATION OF THE NAMED FEATURES FOR TOUTIAO  
13 OR DOUYIN -- IF I'M PRONOUNCING THAT INCORRECTLY, I  
14 APOLOGIZE -- WITHIN TWO DAYS. OKAY?

15                  AND I EXPECT YOU ALL TO WORK THIS OUT REASONABLY AND  
16 FIGURE OUT, RIGHT, AND I ASSUME PLAINTIFFS ARE NOT GOING TO  
17 OVERDESIGNATE RFP'S, AND I WILL BE VERY DISAPPOINTED IF YOU ALL  
18 COME BACK AND SAY THAT THERE'S A DISPUTE AS TO WHICH RFP'S ARE  
19 CAPTURED BY THIS RULING.

20                  MR. DRAKE: ONE POINT OF CLARIFICATION --

21                  THE COURT: SURE.

22                  MR. DRAKE: -- OR PERHAPS CONSIDERATION, YOUR HONOR.

23                  OF COURSE THE POSITION THAT WE HAVE TAKEN WITH THE  
24 PLAINTIFFS IS THAT THE DOCUMENTS THAT WE'RE OTHERWISE SEARCHING  
25 FOR, REVIEWING, AND WILL BE PRODUCING, WHICH IS SUBJECT TO OUR

1 AGREEMENT OF MORE THAN 50 CUSTODIANS JUST HERE RELATING TO  
2 TIKTOK, SEARCH TERMS THAT WERE NEAR FINAL -- CLOSING IN ON A  
3 FINAL, HOPEFULLY, AGREEMENT ON, BUT HAVE A TIMELINE TO DO THAT  
4 AS WELL -- THAT IF THOSE DOCUMENTS, WHICH PRIMARILY WOULD  
5 RELATE TO THE TIKTOK PLATFORM IN THE U.S., ALSO DISCUSS,  
6 ADDRESS, OR COMPARE THEMSELVES TO DOUYIN OR TOUTIAO, ET CETERA,  
7 THOSE DOCUMENTS WILL BE SWEPT IN AND WE'LL PRODUCE THOSE  
8 DOCUMENTS TO THE PLAINTIFFS.

9 WE WILL STILL DO SO, AND I THINK WE TAKE THE POSITION,  
10 WITH YOUR HONOR'S GUIDANCE, THAT THAT WILL BE THE APPROPRIATE  
11 WAY TO GO ABOUT RESPONDING TO THESE PARTICULAR REQUESTS, NOT TO  
12 OPEN THE DOOR ON ANOTHER SET OF CUSTODIANS, ON ANOTHER SET OF  
13 SEARCH TERMS IN CHINA THAT RELATE TO THE ADDITIONAL SERVICES  
14 AND PRODUCTS, BECAUSE THAT'S THE ISSUE, WHETHER THE COMPANY IN  
15 THE UNITED STATES, MAKING THE TIKTOK PLATFORM, WAS AWARE OF  
16 WHAT WAS -- OF THE DESIGN OF THE PLATFORM IN CHINA AND HOW THEY  
17 IMPLEMENTED IT OR DECIDED NOT TO IMPLEMENT IT.

18 THE COURT: TO CLARIFY, THIS IS GOING TO IMPLICATE  
19 DIFFERENT CUSTODIANS IN CHINA. I DON'T SEE HOW IT DOESN'T,  
20 UNLESS YOU TELL ME THAT ALL THE ENGINEERING FOR ALL THREE  
21 PLATFORMS IS DONE IN THE UNITED STATES.

22 MR. DRAKE: NO, IT'S NOT DONE IN THE UNITED STATES.  
23 IT'S DONE BY DIFFERENT PEOPLE ENTIRELY.

24 THE COURT: RIGHT. AND I UNDERSTAND THAT'S AT LEAST  
25 PART OF THE CRUX OF THE DISPUTE IS THAT IT'S GOING TO IMPLICATE

1 AND OPEN THIS UP TO DISCOVERY FROM MORE CUSTODIANS IN CHINA.

2 THAT'S MY RULING.

3 MR. DRAKE: OKAY. MAY WE AT LEAST PRESERVE, AND  
4 DISCUSS DURING OUR MEET AND CONFER, OUR BURDEN OBJECTIONS AND  
5 THE LIKE THAT REALLY WEREN'T PART OF THE DISCUSSION TODAY --

6 THE COURT: YES.

7 MR. DRAKE: -- BUT MAY BE IF WE GET INTO --

8 THE COURT: AGAIN, I ENCOURAGE YOU TO WORK OUT THE  
9 LOGISTICS OF HOW YOU'RE GOING TO MEET YOUR MUTUAL CONCERN ON  
10 THIS ISSUE IN TERMS OF JUST, LIKE, SCOPE OF NUMBER OF  
11 CUSTODIANS, RIGHT, AND NUMBER OF PEOPLE AND HOW YOU'RE GOING TO  
12 HANDLE THE SEARCH. HOPEFULLY YOU'LL USE THE SAME SEARCH TERMS.

13 AND I'M GOING TO BE VERY DISAPPOINTED IF YOU'RE UNABLE TO  
14 ESSENTIALLY TAKE WHAT YOU'VE DONE FOR THE TIKTOK CUSTODIANS AND  
15 FIGURE OUT A WAY TO NEGOTIATE THIS, YOU KNOW, A SIMILAR WAY TO  
16 GET TO A PROPER NUMBER OF CUSTODIANS IN CHINA. OKAY?

17 MR. MURA: THANK YOU, YOUR HONOR.

18 WELL, YOUR HONOR, I WAS JUST GOING TO RETURN TO THE  
19 MARKETING PIECE.

20 THE COURT: BEFORE WE MOVE ON, WE'RE STILL DOING THE  
21 GEOGRAPHIC STUFF.

22 IN THE BRIEFING, THE ONLY EXAMPLE OF A FOREIGN VERSION OF  
23 TIKTOK THAT'S BEEN IDENTIFIED FOR THE COURT, AND THE ONLY ONE I  
24 HAVE A BASIS FOR, IS THAT FRENCH ONE THAT YOU CITED ABOUT A  
25 SAFETY FEATURE THERE.

1 SO I'M NOT OPENING UP, BECAUSE OF THE PROPORTIONALITY AND  
2 FAILURE TO REALLY SHOW RELEVANCE, AS TO EVERY OTHER GEOGRAPHIC  
3 VERSION OF TIKTOK OUTSIDE THE UNITED STATES. THE ONLY ONE  
4 YOU'VE OPENED THINGS UP TO, THAT YOU'VE MADE A BASIS FOR FOR  
5 RELEVANCE, IS THE FRENCH VERSION.

6 MR. MURA: WELL, YOUR HONOR, THE COMPLAINT ALSO  
7 DISCUSSIONS THE CHINESE VERSION, DOUYIN, AND HOW THERE ARE  
8 CERTAIN --

9 THE COURT: I'VE ALREADY RULED ON DOUYIN.

10 MR. MURA: OKAY.

11 THE COURT: I'M TALKING ABOUT OTHER GEOGRAPHIC  
12 VERSIONS OF TIKTOK OUTSIDE OF CHINA, OUTSIDE OF DOUYIN, OUTSIDE  
13 OF TOUTIAO, BECAUSE I ASSUME YOU'VE RAISED, AND I'VE HEARD THIS  
14 BURDEN ISSUE, BUT YOUR REQUEST, IF TAKEN LITERALLY, WOULD COVER  
15 EVERY VERSION OF TIKTOK THROUGHOUT THE EUROPEAN UNION,  
16 THROUGHOUT THE REST OF THE WORLD, EXCLUDING CHINA; CORRECT?

17 MR. MURA: I DON'T THINK IT'S THAT BROAD.

18 BUT I THINK -- WE DON'T KNOW WHAT WE DON'T KNOW AT THIS  
19 POINT, AND WE'VE ONLY SEEN VERY LIMITED DISCOVERY ABOUT IT.

20 THE COURT: AND THE PROBLEM I HAVE IS YOU HAVEN'T --  
21 THE ONLY VERSION OUTSIDE OF THE U.S. AND OUTSIDE OF CHINA THAT  
22 YOU'VE IDENTIFIED WITH ANY SPECIFICITY THAT HAS SOMETHING THAT  
23 APPEARS TO BE AT LEAST A BASIS FOR RELEVANCE IN THE CASE IS THE  
24 FRENCH VERSION.

25 SO WITH REGARD TO ANY OTHER VERSION OF TIKTOK OUTSIDE OF

1 THE U.S., BUT NOT INCLUDING -- AND THIS IS SEPARATE FROM MY  
2 RULING ON CHINA, DOUYIN, AND TOUTIAO -- THE ONLY OTHER VERSION  
3 THAT GETS OPENED UP FOR DISCOVERY IS THE FRENCH VERSION. OKAY?

4 MR. MURA: OKAY.

5 THE COURT: AND AGAIN, SAME THING. I ASSUME IT'S THE  
6 SAME DOCUMENT REQUESTS THAT YOU'RE GOING TO IDENTIFY FOR  
7 TECHNICAL DOCUMENTS TO THE OTHER SIDE, IT WILL BE THE SAME ONES  
8 THAT WILL IMPLICATE THE FRENCH VERSION. BUT MAYBE THERE ARE NO  
9 FRENCH DOCUMENTS BECAUSE MAYBE ALL THE ENGINEERING FOR THE  
10 FRENCH VERSION FOR TIKTOK IS DONE IN THE U.S. I DON'T KNOW.

11 MR. DRAKE: THE DOCUMENT THAT THEY CITED AS TO ONE  
12 ASPECT, THE PRIVATE ACCOUNT PROMPT OF THE FRENCH VERSION, IT'S  
13 NOT CLEAR TO ME UNDER THE CASE LAW, YOUR HONOR, WHY THAT WOULD  
14 OPEN UP THE ENTIRE FRENCH PLATFORM TO DISCOVERY THAT INDICATES  
15 THAT ALL THE DIFFERENT --

16 THE COURT: IT'S NOT OPENING UP THE ENTIRE FRENCH  
17 PLATFORM TO DISCOVERY. IT'S OPENING IT UP TO TECHNICAL  
18 DOCUMENTS ONLY ON THE NAMED FEATURES.

19 SO THEY'RE NOT GETTING WIDE RANGING DISCOVERY ON ANY  
20 PLATFORM. IT'S GOT TO BE PROPORTIONAL AND RELEVANT TO THE  
21 CASE.

22 THEY'VE AT LEAST PROVIDED A BASIS TO FIND THAT THAT  
23 VERSION IS RELEVANT WITHIN THE SCOPE OF DISCOVERY THAT WE HAVE.  
24 OKAY?

25 ANY QUESTIONS OR NEED FOR CLARIFICATION ON THAT PART OF

1 THE RULING?

2 MR. MURA: NO, YOUR HONOR.

3 MR. DRAKE: I SUPPOSE WE UNDERSTAND IT, YOUR HONOR.

4 MR. MURA: I'M SORRY, TWO DAYS IS SATURDAY?

5 THE COURT: BUSINESS DAYS.

6 MR. MURA: TWO BUSINESS DAYS, OKAY. I WAS GOING TO  
7 CALL MR. --

8 THE COURT: IF YOU HAVE IT NOW, YOU MAY AS WELL GIVE  
9 IT TO HIM TODAY.

10 OKAY. ON NON-TECHNICAL DOCUMENTS, MARKETING, THAT KIND OF  
11 THING, I'M NOT SURE -- WELL, LET ME HEAR YOUR ARGUMENT WHY YOU  
12 NEED ALL THAT FOR OUTSIDE OF THE U.S.

13 MR. MURA: WELL, SO MUCH OF -- TIKTOK WAS NOT  
14 LAUNCHED IN 2017. THAT'S THE BIG DISAGREEMENT THAT WE HAVE  
15 WITH DEFENDANTS.

16 BYTEDANCE HAD LAUNCHED SEVERAL OF THESE APPS AND TARGETED  
17 YOUTH, AND THAT'S AN IMPORTANT PART OF THE ORIGIN STORY OF  
18 TIKTOK ITSELF, INCLUDING MUSICAL.LY, WHICH WAS TAKEN OVER BY  
19 TIKTOK AND THEN WAS THE SUBJECT OF FTC ACTION RELATED TO YOUTHS  
20 UNDER 13 BEING ON THE PLATFORM.

21 AND SO THAT'S AN IMPORTANT PART OF THE STORY IN WHICH  
22 TIKTOK AND BYTEDANCE TRIED TO GET MARKET SHARE WITHIN THE  
23 UNITED STATES, DID SO THROUGH THESE OTHER APPS, AND WE THINK  
24 THAT'S HIGHLY RELEVANT, THAT MARKETING STRATEGY OF TARGETING  
25 YOUTHS.

1 SO AT LEAST WITH RESPECT TO MUSICAL.LY, WHICH GOES BACK TO  
2 2014, WE THINK THAT THAT'S IMPORTANT INFORMATION, IT'S  
3 SUBSTANTIATED AND DISCUSSED IN THE COMPLAINT, SO IT OBVIOUSLY  
4 MEETS THE RELEVANCY THRESHOLD, AND WE DON'T THINK IT WOULD BE  
5 BURDENsome.

6 MR. DRAKE: YOUR HONOR --

7 THE COURT: WHY CAN'T THEY GET MARKETING STUFF FROM  
8 MUSICAL.LY?

9 MR. DRAKE: WELL, FIRST OF ALL, IT'S NOT THE SAME  
10 PLATFORM. IT'S A DIFFERENT PLATFORM. I UNDERSTAND THEIR  
11 ARGUMENT THAT IT WAS A PREDECESSOR OR SOMETHING LIKE THAT, BUT  
12 THAT'S NOT THE REALITY.

13 THE REALITY IS THAT TIKTOK LAUNCHED IN THE UNITED STATES  
14 IN MAY OF 2017. IT WAS RELAUNCHED AFTER THE ACQUISITION OF  
15 MUSICAL.LY. SO IT LAUNCHED BEFORE THE ACQUISITION OF  
16 MUSICAL.LY, IT ACQUIRED MUSICAL.LY AND RELAUNCHED IN AUGUST OF  
17 2018.

18 WE OFFERED TO GO BACK IN DISCOVERY TO BEFORE THE LAUNCH,  
19 TO JANUARY 1 OF 2017. WE BELIEVE THAT WAS A VERY FAIR  
20 COMPROMISE.

21 THE PLAINTIFFS, OF COURSE, DIDN'T COMPROMISE AT ALL AND  
22 THEY DEMANDED THAT WE GO BACK TO 2012, FIVE YEARS BEFORE THE  
23 LAUNCH OF THE PRODUCT HERE IN THE UNITED STATES.

24 SO THAT'S CERTAINLY NUMBER ONE. THEY HAVEN'T SHOWN, JUST  
25 LIKE WITH RESPECT TO DOUYIN AND TOUTIAO AND THE OTHER PLATFORMS

1           ACROSS THE WORLD, THAT MUSICAL.LY IS A SUBSTANTIALLY SIMILAR  
2           PRODUCT. IT'S BEEN CHANGED, IT'S BEEN REBRANDED, ET CETERA.

3           SO THEY HAVEN'T MADE THE REQUISITE SHOWING TO GET BEYOND  
4           TIKTOK NOW INTO YET ANOTHER PLATFORM THAT THEY WANT TO TAKE  
5           DISCOVERY INTO.

6           SLIGHTLY DIFFERENT QUESTION. IT WAS A LITTLE BIT -- HE  
7           DODGED, I THINK, A LITTLE BIT YOUR QUESTION ABOUT WHETHER THEY  
8           SHOULD GET MARKETING MATERIALS AND WENT QUICKLY INTO  
9           MUSICAL.LY.

10          SO I WASN'T SURE EXACTLY WHAT YOUR HONOR -- I DON'T KNOW  
11          IF YOU GOT THE ANSWER YOU WERE LOOKING FOR FROM MR. MURA ON  
12          THAT EXACT POINT OR NOT.

13          THE COURT: AS I UNDERSTAND IT, THE DISPUTE IS  
14          NARROWED DOWN TO THAT THEY WANT MARKETING DOCUMENTS FROM  
15          MUSICAL.LY THAT ARE CURRENTLY STILL IN TIKTOK'S POSSESSION.

16          IT'S NOT IN THE MATERIALS. WHEN DID MUSICAL.LY GET  
17          FOUNDED?

18          MR. MURA: 2014, YOUR HONOR.

19          MR. DRAKE: WE WOULD AT LEAST LIKE THE OPPORTUNITY TO  
20          BRIEF THAT ISSUE, YOUR HONOR. IT HASN'T BEEN BRIEFED. IT'S IN  
21          THE LETTERS, THE LETTER BRIEFING. THAT WAS ABOUT TWO TOTALLY  
22          DIFFERENT ISSUES. IT WAS ABOUT THE START DATE FOR DISCOVERY AS  
23          TO TIKTOK. MUSICAL.LY WAS HARDLY REFERENCED.

24          AND THEN THE OTHER ONE WAS ABOUT PLATFORMS OUTSIDE THE  
25          UNITED STATES, NOT ALLEGED PREDECESSOR PLATFORMS IN THE

1 UNITED STATES.

2 THE COURT: IT WAS BRIEFED IN THE TIMEFRAME FOR  
3 BRIEFING.

4 MR. DRAKE: VERY BRIEFLY. IT WAS BARELY MENTIONED.

5 THE COURT: WELL, IT'S NOT THAT COMPLICATED AN ISSUE,  
6 I DON'T THINK. IT WAS FAIRLY PRESENTED TO ME.

7 IT SEEMS TO ME -- AGAIN, HAVE YOU IDENTIFIED WHICH  
8 MARKETING RFP'S WOULD TARGET MUSICAL.LY?

9 MR. MURA: WE CAN DO THAT AS PART OF THIS PROCESS.

10 THE COURT: HOW MANY IS THAT GOING TO BE?

11 MR. MURA: I'M NOT SURE THAT I FEEL COMFORTABLE  
12 GIVING A NUMBER.

13 THE COURT: DID YOU BREAK OUT YOUR MARKETING RFP'S BY  
14 NAMED FEATURE?

15 MR. MURA: WE DO HAVE A MARKETING SET THAT I THINK IS  
16 WHAT WE WOULD GO TO TO HAVE THIS DISCUSSION. I'M SURE WE COULD  
17 PICK THE TAILORED ASPECT OF IT, JUST AS WE WOULD WITH THE  
18 OTHERS.

19 THE COURT: BECAUSE AS I UNDERSTAND IT, YOUR ARGUMENT  
20 IS YOU NEED THOSE MARKETING DOCUMENTS FOCUSSSED ON HEALTH AND  
21 SAFETY TYPE MARKETING ISSUES; RIGHT?

22 MR. MURA: YES, YOUR HONOR.

23 THE COURT: OKAY. SO, AGAIN, YOU HAVE TWO DAYS TO  
24 IDENTIFY A LIMITED SET OF TARGETED RFP'S THAT YOU'VE ALREADY  
25 SERVED THAT WOULD CAPTURE MUSICAL.LY MARKETING DOCUMENTS --

1 MARKETING DOCUMENTS ONLY -- THAT ARE DIRECTED TO THE NAMED  
2 FEATURES IN THE CASE, NOT WIDE RANGING DISCOVERY ON ALL THEIR  
3 MARKETING AND ALL THEIR MARKETING PLANS AND ALL THAT BECAUSE  
4 THAT'S, THAT'S NOT PROPORTIONAL AND THAT'S NOT RELEVANT. YOU  
5 HAVEN'T SHOWN THAT.

6 OKAY?

7 MR. MURA: OKAY.

8 MR. DRAKE: AND IS THIS ALSO ADDRESSED, YOUR HONOR,  
9 TO THE BRIEFING GENERALLY ON THE RELEVANT TIME PERIOD AND THE  
10 START DATE? OR YOU WANT TO ADDRESS THAT SEPARATELY?

11 THE COURT: THERE'S A LOT MORE NUANCE TO THAT. IT  
12 ADDRESSES PART OF IT, BUT NOT ALL OF IT.

13 MR. DRAKE: OKAY.

14 THE COURT: SO AS I UNDERSTAND IT, THAT COVERS --  
15 THAT RESOLVES THIS LETTER BRIEF. THERE WAS NO OTHER ISSUE.

16 IS THAT RIGHT?

17 MR. MURA: NOT AT THIS TIME, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. DRAKE: I BELIEVE IT RESOLVES IT FOR TODAY, YES,  
20 YOUR HONOR.

21 THE COURT: OKAY.

22 THEN WHO'S ARGUING THE TIKTOK -- I MEAN THE YOUTUBE BRIEF  
23 ON THE SIMILAR ISSUE?

24 MS. TRUONG: GOOD AFTERNOON, YOUR HONOR.

25 AN TRUONG FOR PLAINTIFFS.

1                   THE COURT: GOOD AFTERNOON.

2                   MS. MACHOCK: GOOD AFTERNOON, YOUR HONOR.

3                   SAMANTHA MACHOCK FROM WILSON, SONSINI FOR YOUTUBE/GOOGLE.

4                   THE COURT: GOOD AFTERNOON.

5                   SO YOU HAD THE BENEFIT OF HEARING MY DISCUSSION ON THE

6                   PREVIOUS DISCUSSIONS.

7                   SO IT SEEMS TO ME, AGAIN, YOU'VE GOT TO -- ACTUALLY, THIS

8                   BRIEF ACTUALLY LISTED OUT THE REQUESTS THAT ARE AT ISSUE, AND

9                   THERE IS SPECIFIC DISCUSSION OF YOUTUBE, EXAMPLES OF YOUTUBE

10                  AGE VERIFICATION FEATURES IN THE E.U. AND AUSTRALIA THAT'S

11                  PRESENTED IN THE BRIEFS.

12                  SO IN TERMS OF AT LEAST GEOGRAPHIC SCOPE, AGAIN, SIMILAR

13                  TO WHAT I SAID BEFORE, I DON'T BELIEVE IT'S PROPORTIONAL OR

14                  RELEVANT TO GET WIDE RANGING DISCOVERY ON EVERY VERSION OF

15                  YOUTUBE ACROSS THE GLOBE, RIGHT, BECAUSE THERE HASN'T BEEN A

16                  BASIS PRESENTED FOR ME TO APPROVE THAT KIND OF DISCOVERY.

17                  THIS BRIEF DIDN'T USE THE PHRASE "NAMED FEATURES." IS

18                  THAT BECAUSE THE TERM "NAMED FEATURES" WASN'T USED IN THE

19                  DOCUMENT REQUEST, OR WERE YOU JUST -- I KNOW YOU LISTED A BUNCH

20                  OF FEATURES, BUT YOU DIDN'T REFER TO THEM AS THE PHRASE "NAMED

21                  FEATURES."

22                  MS. TRUONG: I CAN TAKE THAT, YOUR HONOR.

23                  THEY ARE LISTED AS NAMED FEATURES IN THE DOCUMENT REQUEST.

24                  THE COURT: OKAY. SO CONSISTENT WITH MY APPROACH ON

25                  THE PREVIOUS MOTION, MY VIEW IS THAT PLAINTIFFS HAVE PROVIDED A

1 SUFFICIENT BASIS TO GET DISCOVERY ON THE NAMED FEATURES  
2 TECHNICAL IMPLEMENTATION IN THE E.U. AND AUSTRALIAN VERSIONS OF  
3 YOUTUBE ONLY.

4 MS. MACHOCK: MAY I --

5 THE COURT: YOUR CHOICE.

6 MS. MACHOCK: MAY I RESPOND TO SOME OF THAT? BECAUSE  
7 THERE'S A COUPLE OF ASSUMPTIONS BAKED IN THERE THAT I DON'T  
8 THINK ARE -- I APPRECIATE YOUR HONOR'S RULING AND  
9 CLARIFICATION, BUT THEY'RE NOT QUITE ACCURATE.

10 SO PLAINTIFFS HERE HAVE NOT -- I DO KNOW THEY LIST SOME  
11 RFP'S IN THE FOOTNOTE IN THEIR LETTER BRIEF, BUT THEY HAVE NOT  
12 AT ANY POINT IN THIS PROCESS WITH LETTER BRIEFING ARTICULATED  
13 WHICH RFP'S THEY'RE LOOKING FOR OR LIMITED IN ANY WAY.

14 THEY ARE SIMPLY IDENTIFYING RFP'S FOR WHICH YOUTUBE HAS  
15 MADE AN EXPLICIT OBJECTION, WHICH WAS OVER 60 RFP'S. SO IT'S  
16 NOT TAILORED IN ANY WAY.

17 AND OUR UNDERSTANDING FROM CONVERSATIONS WITH PLAINTIFFS  
18 HAS BEEN THAT THEY ARE SEEKING A GLOBAL RULING, SUCH THAT ANY  
19 FUTURE RFP THEY MIGHT SERVE, ANY EXISTING RFP, THEY COULD SEEK  
20 EXTRATERRITORIAL DISCOVERY ON ANY RFP THAT IT DOES NOT HAVE.

21 THAT IS OUR UNDERSTANDING.

22 THE COURT: I'M NOT IN THE POSITION OF GRANTING -- OF  
23 GIVING HYPOTHETICAL RULINGS ON THINGS THAT I HAVEN'T BEEN  
24 PRESENTED WITH. SO AS I SAID, I'M NOT AT THIS POINT GRANTING  
25 ANYBODY GLOBAL DISCOVERY ON ANYTHING.

1 MS. MACHOCK: OKAY. MAY I RESPOND TO THE NAMED  
2 FEATURES POINT AS WELL?

3 THE COURT: SURE.

4 MS. MACHOCK: THE OTHER PROBLEM IS THAT EVEN LIMITED  
5 TO 14 FEATURES, I THINK THERE'S SOME PROBLEMS WITH THAT BECAUSE  
6 THESE FEATURES ARE VERY ILL DEFINED.

7 MANY OF THEM, THERE'S NO CLAIMS AGAINST YOUTUBE RELATED TO  
8 THESE FEATURES. FOR EXAMPLE, LIKE FRIEND RECOMMENDATIONS IS  
9 SIMPLY IRRELEVANT TO YOUTUBE.

10 GEOLOCATION, WE HAVE YET TO HEAR PLAINTIFFS ARTICULATE ANY  
11 WAY IN WHICH GEOLOCATION IS RELEVANT TO ANY CLAIM AGAINST  
12 YOUTUBE.

13 AND AS YOUR HONOR PREVIOUSLY NOTED WITH RESPECT TO MY  
14 COLLEAGUE AT TIKTOK, SEVERAL OF THE NAMED FEATURES ARE ALSO  
15 OUT: PERSONALIZATION, ENDLESS SCROLL, ALGORITHMIC  
16 RECOMMENDATIONS, NOTIFICATIONS, THOSE ARE BARRED BY SECTION 230  
17 OF THE FIRST AMENDMENT.

18 SO THERE'S TWO ISSUES HERE. THERE'S THAT PLAINTIFFS NEED  
19 TO IDENTIFY ACTUALLY, YOU KNOW, WHAT THEY'RE SEEKING, LIKE A  
20 SPECIFIC ISSUE, A SPECIFIC FEATURE, AND THE SPECIFIC GEOGRAPHIC  
21 REGION FOR WHICH THEY THINK THERE'S SOME REASON TO THINK THAT  
22 RELEVANT ALTERNATE DESIGN DISCOVERY WOULD BE -- DISCOVERY WILL  
23 LEAD TO RELEVANT ALTERNATIVE DESIGN DOCUMENTS, AND THEY HAVEN'T  
24 DONE THAT.

25 THE FIRST TIME THEY'VE EVER ARTICULATED ANY SPECIFIC BASIS

1 WAS IN THAT FOOTNOTE IN THEIR LETTER BRIEF WHERE THEY VAGUELY  
2 REFERENCED AGE VERIFICATION IN THE E.U. BUT EVEN THEN, THEY  
3 HAVEN'T ARTICULATED WHY THEY THINK THERE'S AN ALTERNATE DESIGN  
4 THERE.

5 WHAT THEY REFERENCED IS THAT THERE ARE ADDITIONAL ACCESS  
6 RESTRICTIONS TO MATURE CONTENT. HOWEVER, THEY'VE SPECIFICALLY  
7 DISCLAIMED THAT THIS CASE IS ABOUT CONTENT.

8 SO EVEN IF WE DO AGE GATE MATURE CONTENT IN A DIFFERENT  
9 WAY IN THE E.U. OR A.U., AGAIN, IT IS NOT AT ALL CLEAR TO US  
10 HOW THAT IS RELEVANT TO ANY CLAIM IN THIS CASE GIVEN THAT THESE  
11 PLAINTIFFS ARE NOT ASSERTING ANY CLAIM ABOUT PLAINTIFFS' ACCESS  
12 TO MATURE CONTENT IN THE U.S.

13 SO I THINK THIS JUST ILLUSTRATES SORT OF THE PROBLEM HERE.  
14 WE HAVEN'T GOTTON A CHANCE TO REALLY ENGAGE IN ANY MEANINGFUL  
15 WAY ON THE RELEVANCE ISSUE OR THE PROPORTIONALITY ISSUE BECAUSE  
16 PLAINTIFFS HAVEN'T ARTICULATED SPECIFIC DISCOVERY THAT THEY'RE  
17 SEEKING. WE JUST HAVE THIS, LIKE, BROAD APPROACH WHERE THEY  
18 WANT EVERYTHING ABOUT THE YOUTUBE PLATFORM IN OVER 100  
19 DIFFERENT COUNTRIES AND EVERY POTENTIAL FEATURE.

20 THE COURT: SO I'VE ALREADY RULED GEOGRAPHICALLY  
21 THEY'RE NOT GETTING DISCOVERY FROM DIFFERENT COUNTRIES.

22 MS. MACHOCK: RIGHT, BUT WE HAVEN'T HAD A CHANCE TO  
23 ARTICULATE OR ENGAGE ON THE RELEVANCE ISSUE OR THE  
24 PROPORTIONALITY ISSUE BECAUSE THEY HAVEN'T COME TO US WITH ANY  
25 REQUESTS THAT ARE SPECIFIC, SUFFICIENTLY TAILORED THAT WE CAN

1 ACTUALLY HAVE A MEANINGFUL DISCUSSION WITH THEM.

2 MS. TRUONG: YOUR HONOR, MAY I RESPOND?

3 THE COURT: YEAH, GO AHEAD.

4 MS. TRUONG: OUR BRIEFING HERE IS IN RESPONSE TO  
5 YOUTUBE'S OBJECTIONS RAISED IN THESE VERY SPECIFIC REQUESTS  
6 WHICH WE'VE LISTED IN FOOTNOTE 2, AND IN RESPONSE TO THAT  
7 OBJECTION, WE WENT TO THEM AND SAID, LET'S HAVE A DISCUSSION,  
8 WE CAN NARROW IT TO NAMED FEATURES, WHICH WE IDENTIFIED.

9 AND THEN WE FURTHER SAID, IF YOU WANT TO HAVE A CONTINUED  
10 DISCUSSION, WHY DON'T YOU TELL US WHAT FEATURES EXIST AND WE  
11 CAN FURTHER NARROW THAT LIST? WE CAN HAVE A CONVERSATION ABOUT  
12 SOURCES, ABOUT CUSTODIANS, AND ABOUT HOW WE CAN TAKE THIS DOWN  
13 TO A MORE FEASIBLE AND APPROACHABLE RESOLUTION OF THOSE  
14 PARTIES.

15 YOUTUBE'S RESPONSE TO THAT WAS, NO, IT'S JUST TOO HARD.

16 THEY DID NOT ENGAGE WITH US ON BURDEN. THEY DID NOT  
17 PRESENT ANYTHING IN THEIR BRIEFING TO DEMONSTRATE OR ILLUSTRATE  
18 WHAT EXACTLY IS AT ISSUE.

19 AND SO I THINK THIS IS WHY WE'RE AT IMPASSE ON THIS  
20 BRIEFING OF THIS POINT.

21 AND I HEARD THE PRIOR ARGUMENTS, SO I DON'T WANT TO  
22 BELABOR ANY OF THE POINTS WITH RESPECT TO WHY THE NAMED  
23 FEATURES WE HAVE LISTED REMAIN IN THE CASE, BUT I WOULD ECHO  
24 WHAT HAS BEEN SAID BY MY CO-COUNSEL ON THAT.

25 THE COURT: OKAY. SO THIS GOES TO A BROADER POINT.

1 I AM, I WOULD SAY, DISAPPOINTED GENERALLY WITH THE LACK OF  
2 PRODUCTIVE MEET AND CONFERS THROUGHOUT THESE DISCOVERY MOTIONS.  
3 YOU KNOW, IT -- THERE ARE ISSUES BURIED IN HERE ON WHICH I  
4 ASSUME REASONABLE LAWYERS, OF COURSE, CAN DISAGREE.

5 BUT SOME OF THESE, LIKE WHEN YOU COME TO ME WITH A BRIEF  
6 THAT SAYS THEY DIDN'T MEET AND CONFER ADEQUATELY ON THIS AND WE  
7 TRIED AND THEN WE GAVE UP, THAT'S FINE.

8 BUT YOU ALL KNOW YOUR CASES BETTER THAN I DO, YOU KNOW  
9 YOUR DOCUMENTS AND YOUR CUSTODIANS BETTER THAN I DO, AND YOU'RE  
10 ASKING ME TO DRAW LINES, RIGHT, WHERE I HAVE LESS PERFECT  
11 INFORMATION THAN YOU ALL HAVE.

12 SO THE RISK YOU'RE RUNNING IS I'M GOING TO DRAW LINES IN  
13 WAYS THAT YOU COULD HAVE NEGOTIATED AROUND. SO I JUST WANT TO  
14 MAKE CLEAR TO YOU ALL THAT YOU BRING DISPUTES TO ME, I'M GOING  
15 TO RULE ON THEM, RIGHT, AND YOU'RE GOING TO BE DISAPPOINTED ON  
16 SOME OF IT, BUT THAT'S THE RISK YOU RUN WHEN YOU BRING IT TO ME  
17 AND YOU DON'T, AS I'VE SEEN -- I'VE HEARD AND I'VE SEEN IN SOME  
18 OF THESE BRIEFS WHAT I CONSIDER TO BE FAIRLY INADEQUATE AT THE  
19 END OF THE DAY MEET AND CONFERS; RIGHT?

20 YOU REALLY -- I THINK I SAID THIS AT DMC'S REPEATEDLY.  
21 YOU NEED TO TALK TO EACH OTHER; RIGHT? AND SIMPLY SAYING,  
22 WELL, WE OBJECT AND WE'RE NOT GOING TO DO THAT AND WE'RE NOT  
23 GOING TO DO THIS OR WHATEVER IS JUST NOT SUFFICIENT, AND THERE  
24 ARE WAYS TO NARROW THESE DISPUTES.

25 THE PROPOSAL THAT YOUTUBE IDENTIFY THE FEATURES THAT ARE

1 RELEVANT I THINK PUTS -- THAT ACTUALLY PUTS THE BURDEN ON THE  
2 WRONG PARTY BECAUSE YOU'RE THE ONE SEEKING THE DISCOVERY, AND  
3 PRESUMABLY YOU'VE DONE SOME INVESTIGATION AS TO WHAT PUBLIC  
4 FACING FEATURES THEY HAVE, AND YOU SHOULD BE ABLE TO IDENTIFY,  
5 YOU KNOW, WHAT THOSE FEATURES ARE.

6 CONVERSELY, RIGHT, IF THEY JUST GIVE YOU A LIST OF  
7 FEATURES AND SAY, THESE ARE THE FEATURES, AND YOU DON'T HAVE  
8 THEM, THAT MAKES YOUR JOB AS DEFENSE COUNSEL EASY. JUST SAY,  
9 WE DON'T HAVE ANY RESPONSIVE DOCUMENTS.

10 YOU DON'T HAVE TO THROW UP YOUR HANDS AND SAY, WE DON'T  
11 UNDERSTAND, BECAUSE IF YOU READ IT AND YOU SAY, FOR EXAMPLE, WE  
12 DON'T HAVE -- I THINK YOU SAID YOU HAVE IT, SO JUST  
13 HYPOTHETICALLY -- WE DON'T HAVE GEOLOCATION, IF YOU JUST DON'T  
14 HAVE IT, THAT'S AN EASY RESPONSE AND THERE'S NO NEED TO MEET  
15 AND CONFER ON THAT AND CLAIM THAT IT'S CONFUSING OR WHATEVER.  
16 YOU SHOULD RESPOND THAT WAY. OKAY?

17 ALL RIGHT. SO I'M GOING TO STICK WITH MY, MY RULING HERE.  
18 OKAY? SO -- BUT I'M GOING TO MODIFY IT.

19 FOR YOUTUBE, YOU NEED TO IDENTIFY THE SPECIFIC DOCUMENT  
20 REQUESTS, AS I DID WITH TIKTOK, THE SPECIFIC DOCUMENT REQUESTS  
21 THAT GO TO TECHNICAL IMPLEMENTATION DOCUMENTS FOR THE NAMED  
22 FEATURES, RIGHT, THAT YOU'RE GOING AFTER. BECAUSE I PRESUME  
23 IT'S -- I DIDN'T COUNT ALL OF THEM, BUT IT'S DEFINITELY MORE  
24 THAN 20 DOCUMENT REQUESTS, AND I DON'T THINK YOU NEED ALL 20 TO  
25 GET AT THAT.

1 ALL RIGHT?

2 MS. TRUONG: UNDERSTOOD, YOUR HONOR.

3 THE COURT: SO YOU HAVE TWO DAYS TO IDENTIFY THE  
4 DOCUMENT REQUESTS. SAME INSTRUCTIONS AS THE PREVIOUS RULING.

5 THEY BETTER BE NARROWLY TAILORED AND THEY BETTER BE DIRECTED TO  
6 TECHNICAL IMPLEMENTATION OF THE NAMED FEATURES. OKAY?

7 AND THEN I DON'T -- I'M GOING TO BE VERY, VERY  
8 DISAPPOINTED IF YOU COME BACK TO ME AND SAY YOU CAN'T EVEN  
9 AGREE ON WHICH DOCUMENT REQUESTS ARE ENCOMPASSED BY THIS.

10 FOR THOSE DOCUMENT REQUESTS, DISCOVERY EXTENDS TO THE  
11 EUROPEAN VERSION AND THE AUSTRALIAN VERSION OF YOUTUBE ONLY.  
12 SO NOTHING OUTSIDE OF THOSE REGIONS.

13 WHEN I SAY "EUROPEAN," BECAUSE OF WHAT THE U.K. HAS DONE,  
14 I'M INCLUDING THE U.K. IN EUROPEAN UNION, ALTHOUGH THEY'RE NOT  
15 TECHNICALLY IN. SO IT'S CALLED NATO PLUS E.U., OKAY?

16 SO THAT -- SO GEOGRAPHIC LIMITS I THINK ARE CLEAR, UNLESS  
17 ANYBODY IS UNCLEAR.

18 MS. TRUONG: YOUR HONOR, MAY I BE HEARD ON GEOGRAPHIC  
19 LIMITS JUST BRIEFLY?

20 I HEAR THE COURT ON, ON WHAT THE POSITIONING IS. I JUST  
21 WANT TO REITERATE THAT IT IS VERY DIFFICULT, WHEN WE DON'T HAVE  
22 THE BENEFIT OF THE DOCUMENT PRODUCTION AND THERE IS CLEAR  
23 ASYMMETRY IN INFORMATION HERE, FOR US TO BE ABLE TO IDENTIFY  
24 EVERY SINGLE FEATURE THAT MAY BE OUT THERE, AND YOUTUBE IS  
25 CLEARLY IN A BETTER POSITION TO DO THAT, AND IT WOULD JUST, YOU

1 KNOW, IN TERMS OF JUST FAIRNESS, YOU KNOW, FOR THEM TO COME  
2 FORWARD WITH A LIST AND WE CAN HAVE A CONVERSATION ON IT.

3 THE COURT: IT'S -- IT'S -- CERTAINLY YOU CAN DO  
4 WHATEVER YOU CAN OR WANT TO DO IN MEET AND CONFERS TO EXCHANGE  
5 INFORMATION. LIKE I SAID, IF YOU TALK OPENLY WITH EACH OTHER,  
6 THAT'S A GOOD THING.

7 BUT IF THEY'RE GOING TO COME TO ME ON A MOTION AND SAY, WE  
8 SHOULDN'T BE FORCED TO DO THAT BECAUSE YOU'RE MAKING US DO YOUR  
9 WORK FOR YOU, AT A FUNDAMENTAL LEVEL, THEY'RE PROBABLY RIGHT.

10 NOW, THERE'S A LOT OF THINGS THAT PARTIES CAN DO  
11 COOPERATIVELY, AND I WOULD ENCOURAGE THAT. BUT IF YOU'RE GOING  
12 TO INSIST ON FILING THE BRIEF AND STANDING ON YOUR LEGAL  
13 RIGHTS, THAT'S MY RULING.

14 HAVING SAID THAT, I DON'T WANT TO DO YOUR JOB FOR YOU, BUT  
15 THERE ARE WAYS TO GET AT THAT INFORMATION THAT DON'T REQUIRE  
16 DOCUMENT REQUESTS. YOU CAN SERVE INTERROGATORIES THAT SAY --  
17 OR YOU CAN SERVE REQUESTS FOR ADMISSION, PLEASE ADMIT YOU HAVE  
18 GEOLOCATION. PLEASE ADMIT YOU HAVE IT IN THIS VERSION IN THIS  
19 COUNTRY.

20 AND THERE ARE MANY, MANY DIFFERENT WAYS TO GET AT THE  
21 INFORMATION YOU'RE GOING FOR OTHER THAN ASKING THEM TO PROVIDE  
22 YOU A VOLUNTARY LIST. ALL RIGHT?

23 SO DISCOVERY HAS BEEN OPEN FOR AWHILE. THERE'S NOTHING  
24 STOPPING YOU FROM DOING THAT.

25 MS. TRUONG: UNDERSTOOD, YOUR HONOR.

1                   THE COURT: ALSO -- LET ME FINISH.

2                   WHEN I WAS A YOUNG LAWYER, I WAS ALWAYS TAUGHT, WHEN THE  
3                   COURT'S MOUTH OPENS, YOUR MOUTH CLOSES; RIGHT?

4                   SO YOU HAVE THE CHANCE TO INVEST -- THE VERSIONS OF  
5                   YOUTUBE OUT THERE, THERE'S NOTHING STOPPING YOU FROM GOING OUT  
6                   AND INSPECTING THEM AND INVESTIGATING THEM ON YOUR OWN AS TO  
7                   WHAT THE PUBLIC FACING FEATURES ARE; RIGHT?

8                   AND SO YOU COULD HAVE CHOSEN, YOU DIDN'T HAVE TO GO -- YOU  
9                   COULD HAVE CHOSEN FIVE OF THE MAJOR MARKETS IN THE WORLD AND  
10                  LOOKED AT THEIR VERSIONS. IT'S 14 FEATURES. I DON'T THINK  
11                  IT'S THAT BURDENSONE TO DO YOUR OWN INVESTIGATION TO FIGURE OUT  
12                  WHAT THOSE FEATURES ARE IN OVERSEAS VERSIONS SINCE IT'S  
13                  TARGETED TO THOSE NAMED FEATURES.

14                  ALL RIGHT. SO I DON'T WANT TO TELL YOU HOW TO DO YOUR OWN  
15                  INVESTIGATION AND YOUR OWN JOB, BUT THE ARGUMENT THAT THEY  
16                  SHOULD HAVE BEEN REQUIRED TO FALLS FLAT IN LIGHT OF ALL THAT.  
17                  OKAY?

18                  MS. TRUONG: I JUST WANT TO SAY, I HEAR YOU ON THAT,  
19                  YOUR HONOR, AND WE WILL TAKE THAT FORWARD SPECIFICALLY WITH  
20                  RESPECT TO THE RFP'S THAT YOU WANT US TO IDENTIFY WITHIN THE  
21                  NEXT TWO DAYS.

22                  THE COURT: RIGHT. OKAY. SO THAT COVERS -- I THINK  
23                  THAT COVERS MOST OF THE DISPUTE HERE, BUT LET ME KNOW IF YOU  
24                  NEED MORE CLARIFICATION OR IF THERE'S OPEN DISPUTES.

25                  MS. MACHOCK: MAY I SEEK CLARIFICATION? BECAUSE I

1           THINK THERE'S TWO ISSUES, RELEVANCE AND PROPORTIONALITY.

2           YOU HAVE MADE A RULING ON RELEVANCE AS TO AGE VERIFICATION  
3           IN AUSTRALIA AND E.U., RIGHT. BUT THAT'S ONE NAMED FEATURE,  
4           AND THAT IS THE ONLY ARGUMENT PLAINTIFFS HAVE MADE FOR WHY  
5           EXTRATERRITORIAL DISCOVERY IS RELEVANT.

6           THERE'S -- THEY HAVEN'T MADE ANY SHOWING WHATSOEVER ON ANY  
7           OTHER NAMED FEATURE, SO MAY I CLARIFY THAT YOUR RULING IS  
8           LIMITED TO AGE VERIFICATION?

9           THE COURT: IT IS NOT LIMITED TO AGE VERIFICATION.  
10          IT INCLUDES ALL THE NAMED FEATURES IN THE DOCUMENT REQUESTS.

11          MS. MACHOCK: EVEN THE NAMED FEATURES THAT DON'T  
12          APPLY -- THAT'S WHY I'M SAYING IT'S A PROBLEM --

13          THE COURT: TALK TO THEM.

14          MS. MACHOCK: WE DO --

15          THE COURT: AH, AH.

16          MS. MACHOCK: SORRY.

17          THE COURT: IF YOU DON'T HAVE THE FEATURE, THEN THE  
18          RESPONSE IS EASY AND IT'S -- THERE'S NO BURDEN ON YOU; RIGHT?  
19          I MEAN, I DON'T UNDERSTAND THE CONCERN THERE.

20          MS. MACHOCK: WELL, YOU JUST ARTICULATED THAT SOME OF  
21          THE NAMED FEATURES HAVE BEEN RULED BARRED BY THE FIRST  
22          AMENDMENT AND SECTION 230, AND WE AGREE WITH YOU.

23          AND SO I WAS TRYING TO REFER TO THE RULING YOU MADE  
24          PREVIOUSLY IN THIS HEARING WITH THE RULING YOU'RE MAKING NOW.  
25          SOME OF THE NAMED FEATURES PLAINTIFFS ARE NOT ENTITLED TO

1 EXTRATERRITORIAL DISCOVERY, AND I WAS JUST IDENTIFYING THOSE.

2 THE COURT: AGAIN, AS I DID WITH THE PREVIOUS ONE, I  
3 WAS FOCUSED ON TECHNICAL DOCUMENTS.

4 AS I SAID EARLIER, MARKETING DOCUMENTS, THEY GET ALL THE  
5 NAMED FEATURES, BUT TO ME THAT GOES TO THE FAILURE TO WARN.

6 MS. MACHOCK: OKAY. I GUESS BECAUSE THIS HAS NEVER  
7 BEEN -- I FEEL LIKE WE HAVE NOT HAD AN OPPORTUNITY TO BE HEARD  
8 ON THIS BECAUSE THIS WAS TEED UP IN A GLOBAL SENSE WHERE  
9 PLAINTIFFS WERE SEEKING A DEFAULT RULING AND THEY DID NOT EVER  
10 COME TO US AND ASK FOR DOCUMENTS IN AUSTRALIA OR THE E.U. ON  
11 AGE VERIFICATION.

12 HAD THEY COME TO US WITH THAT REQUEST, IT WOULD HAVE BEEN  
13 A VERY DIFFERENT CONVERSATION.

14 THE COURT: THERE'S NOTHING STOPPING YOU FROM MAKING  
15 THAT PROPOSAL YOURSELVES VOLUNTARILY.

16 MS. MACHOCK: WE CAN'T -- WE CAN'T ANTICIPATE WHAT  
17 PLAINTIFFS WANT. IT'S NOT POSSIBLE FOR US.

18 WE'RE ALREADY LOOKING AT MILLIONS OF DOCUMENTS JUST WHEN  
19 WE LIMIT DISCOVERY TO THE UNITED STATES. THE VOLUMES ARE  
20 ALREADY ASTRONOMICAL. SO TO EXPECT US I THINK TO GO AND  
21 INVESTIGATE WHAT WE MAY DO IN ANY OTHER JURISDICTION IN THE  
22 WORLD --

23 THE COURT: SO I'M NOT ASKING YOU TO INVESTIGATE  
24 EVERY JURISDICTION IN THE WORLD; RIGHT? AND YOU'VE HAD THE  
25 BRIEF FOR LONGER THAN -- MAYBE LONGER THAN YOU TOOK TO DO THE

1 MEET AND CONFERS, AND YOU SAW IN THE BRIEF THE EVIDENCE ON E.U.  
2 AND AUSTRALIA.

3 THERE'S NOTHING STOPPING ANY OF YOU FROM CONTINUING TO  
4 NEGOTIATE DISCOVERY DISPUTES BEFORE THE HEARING, BEFORE A  
5 RULING, AND YOU COULD -- AGAIN, NOTHING STOPPED YOU FROM, IN  
6 LIGHT OF THE BRIEFING, GOING TO YOUTUBE AND SAYING, THE -- THE  
7 PLAINTIFFS AND SAYING, LOOK, HOW ABOUT IF WE LIMIT THIS TO JUST  
8 E.U. AND AUSTRALIA?

9 SO, AGAIN, THIS IS REALLY ONLY DEALING WITH DISCOVERY  
10 ISSUES AT THIS POINT. I'M NOT GOING TO HAVE YOU GO TO THE  
11 ISSUE IN TERMS OF EXTRA BRIEFING AND EXTRA HEARINGS. IT'S  
12 TAKING TOO LONG TO GET TO THIS POINT.

13 SO THAT'S MY RULING ON THAT.

14 MS. HAZAM WANTS TO TALK.

15 MS. HAZAM: JUST BRIEFLY, YOUR HONOR.  
16 JUST FOR THE PURPOSE OF CLARITY AS WE MOVE FORWARD HERE,  
17 SO WE'RE LESS LIKELY TO COME BACK TO THE COURT, COUNSEL  
18 REFERRED A FEW MOMENTS AGO TO A RULING MADE EARLIER DURING THE  
19 HEARING. I WANT TO CLARIFY THAT. I DON'T BELIEVE SUCH A  
20 RULING WAS MADE.

21 WE HAVE DEFINED NAMED FEATURES FOR PURPOSES OF ALL OF  
22 THESE DOCUMENT REQUESTS. THOSE NAMED FEATURES INCLUDE THE  
23 ALGORITHM, AS WELL AS NOTIFICATIONS, AS WELL AS AGE  
24 VERIFICATION.

25 THE COURT, IN HER RULING ON SECTION 230, STATED THAT

1 DEFENDANTS COULD MEET THEIR DUTY WITHOUT MAKING ANY CHANGES TO  
2 HOW THEY PUBLISH CONTENT BY PROVIDING WARNINGS FOR ANY AND ALL  
3 OF THE ALLEGED DEFECTS.

4 WHEN THIS WAS THEN DISCUSSED WITH THE COURT THEREAFTER AT  
5 A HEARING, I STATED TO THE COURT THAT THE COURT'S RULING  
6 INDICATED THE FAILURE TO WARN COULD EXTEND TO FEATURES BEYOND  
7 THOSE THAT YOUR HONOR PUT IN THE INITIAL LIST OF FEATURES  
8 PRECLUDED UNDER SECTION 230.

9 THE COURT SAID PLAINTIFFS ARE CORRECT.

10 AND THEN FINALLY, IN THE STATUS CONFERENCE WE HAD BEFORE  
11 YOUR HONOR ON THE 21ST OF MARCH, YOUR HONOR INDICATED THAT THE  
12 WAY YOU READ THE ORDER MEANT THAT ALL THE ALLEGED DEFECTS IN  
13 THE COMPLAINT WERE IN THE CASE FOR PURPOSES OF DISCOVERY.

14 SO I JUST WANT IT TO BE CLEAR THAT WE ARE NARROWING OUR  
15 LIST OF RFP'S IN KEEPING WITH WHAT YOUR HONOR HAS ORDERED,  
16 TECHNICAL IMPLEMENTATION AND MARKETING, BUT WE ARE NOT  
17 NARROWING THEM IN TERMS OF THE NAMED FEATURES IN THE DOCUMENT  
18 REQUESTS.

19 THE COURT: WELL, I WILL SAY, IN TERMS OF -- YOU ARE  
20 LIMITING THEM TO ALL THE NAMED FEATURES.

21 MS. HAZAM: YES, THAT'S THE WAY WE'RE LIMITING THEM,  
22 BUT NOT FURTHER, BECAUSE I THINK COUNSEL WAS SUGGESTING THERE  
23 WOULD BE FURTHER LIMITATIONS THERE.

24 THE COURT: THAT'S CORRECT.

25 MS. HAZAM: THANK YOU.

1                   THE COURT: ANY OTHER CLARIFICATION NEEDED ON YOUTUBE  
2 ISSUES?

3                   MR. DRAKE: WELL, CAN I BE HEARD ON THAT, YOUR HONOR?  
4 BECAUSE IT APPEARS THAT MS. HAZAM HAS REOPENED MY MOTION.

5                   THE COURT: I DON'T THINK SO, BUT GO AHEAD.

6                   MR. DRAKE: I THOUGHT YOUR HONOR WAS VERY CLEAR ABOUT  
7 THE SCOPE OF THE FEATURES AND WHETHER IT INCLUDED THE ALGORITHM  
8 OR NOT, AND YOUR HONOR SAID THAT IT DIDN'T, WHICH IS IN KEEPING  
9 WITH JUDGE GONZALEZ ROGERS'S ORDER. IT COULDN'T BE MORE CLEAR  
10 ON THAT.

11                  AND MS. HAZAM KEEPS BRINGING UP DIFFERENT QUOTATIONS TO  
12 TRY TO REVISIT THE ISSUE. I THOUGHT MS. MACHOCK UNDERSTOOD  
13 YOUR HONOR'S ORDER AND THAT'S WHY SHE SAID WHAT SHE SAID DURING  
14 HER PRESENTATION. I THOUGHT IT WAS VERY CLEAR.

15                  AND YOUR HONOR ALSO REITERATED THE POINT THAT THE  
16 ALGORITHM, WHY WOULD YOU NEED -- IT'S NOT ONE OF THE FEATURES  
17 THAT PASS MUSTER UNDER SECTION 230, POINT BLANK. THE ORDER  
18 COULDN'T BE MORE CLEAR ABOUT THAT.

19                  SO REGARDLESS OF ITS OVERALL RELEVANCE TO THE CASE, WHICH  
20 IS WHAT YOUR HONOR SAID, AS IT RELATES TO THE SPECIFIC DOCUMENT  
21 REQUESTS AS TO DOUYIN AND TOUTIAO OR OTHER FEATURES OR OTHER  
22 PLATFORMS AROUND THE WORLD FOR YOUTUBE OR WHATNOT, THAT  
23 DOESN'T -- IT DOESN'T HAVE ANYTHING TO DO WITH IT.

24                  AND WHAT WE'RE TALKING ABOUT IS WHETHER THE AGE  
25 VERIFICATION SYSTEMS ARE THE SAME OR NOT THE SAME AS IN THE

1 UNITED STATES, WHETHER THE PARENTAL CONTROLS ARE THE SAME OR  
2 NOT THE SAME, NOT WHETHER THE ALGORITHM IS.

3 MS. HAZAM: YOUR HONOR, RESPECTFULLY, COUNSEL IS  
4 MUDDYING THE WATERS AND SEEKING TO RELITIGATE A MATTER THAT WAS  
5 SETTLED BY BOTH JUDGE GONZALEZ ROGERS AND THIS COURT SOME TIME  
6 AGO.

7 ALL OF THE NAMED FEATURES ARE IN THE CASE FOR PURPOSES OF  
8 DISCOVERY BASED UPON THE FAILURE TO WARN CLAIM, WHICH THE COURT  
9 FOUND EXTENDED TO ANY AND ALL OF THE FEATURES.

10 AND WHEN WE NOTED THAT IT WAS IMPORTANT TO THE KNOWLEDGE  
11 OF THE DEFENDANTS IN THE CASE, THE COURT AGREED.

12 SO WE ARE GOING TO HONOR YOUR COURT'S, YOUR HONOR'S  
13 GUIDANCE IN TERMS OF THE RFP'S TO KEEP THEM TO THOSE THAT ARE  
14 ABOUT DOUYIN AND TOUTIAO -- IF I'M PRONOUNCING THAT CORRECTLY,  
15 I APOLOGIZE IF I'M NOT -- AND AS TO TECHNICAL MATTERS AND AS TO  
16 MARKETING IN THE WAY THAT YOUR HONOR HAS DESCRIBED.

17 BUT IT IS NOT OUR UNDERSTANDING THAT WE ARE LIMITING THEM  
18 BEYOND THE LIST OF THE NAMED FEATURES IN THE REQUESTS.

19 IF THAT IS AT ISSUE, THAT IS SOMETHING WE WILL NEED TO  
20 BRIEF FOR THE COURT.

21 MR. DRAKE: WE'RE NOT TALKING ABOUT WHETHER THE  
22 ALGORITHM IS IN OR OUT OF THE ENTIRE CASE. THAT'S WHAT YOUR  
23 HONOR SAID.

24 WE'RE TALKING ABOUT WHETHER THE ALGORITHM WAS THE SUBJECT  
25 OF, APPROPRIATE SUBJECT OF DISCOVERY WHEN VENTURING INTO

1 PRODUCTS OTHER THAN THOSE USED BY THE PLAINTIFFS AND ALLEGED TO  
2 BE THE DEFECTIVE PRODUCTS IN THE CASE.

3 THEY ALLEGE THAT TIKTOK IS DEFECTIVE. ONE OF THE REASONS  
4 THEY ALLEGE THAT TIKTOK IS DEFECTIVE IN THEIR COMPLAINT IS  
5 BECAUSE OF ITS ALGORITHM.

6 JUDGE GONZALEZ ROGERS SAID THAT'S OUT, IT'S BARRED UNDER  
7 SECTION 230 AND, THUS, IT DOESN'T GIVE RISE TO DISCOVERY INTO  
8 DEFECTIVE OR OTHER ASPECTS OF THE DESIGN OF THE FEATURES IN  
9 OTHER COUNTRIES.

10 WHETHER IT GETS IN AT TRIAL SUBJECT TO THE FAILURE TO WARN  
11 CLAIM OR SOMETHING ELSE IS A TOTALLY DIFFERENT ISSUE THAT'S NOT  
12 BEFORE THE COURT TODAY.

13 I THINK YOUR HONOR IS SPOT ON IN THE WAY YOU ORIGINALLY  
14 WERE TRYING TO ADDRESS THE ISSUE AND THREAD THE NEEDLE ON THAT.

15 MS. HAZAM: YOUR HONOR, I FUNDAMENTALLY DISAGREE WITH  
16 THE CHARACTERIZATION OF JUDGE GONZALEZ ROGERS'S ORDER.

17 SHE DID NOT PUT THESE FEATURES OUTSIDE OF THE CASE. SHE  
18 SAID THAT THEY ARE NOT VIABLE AS PRODUCT LIABILITY CLAIMS UNDER  
19 SECTION 230.

20 SHE THEN SAID, AND AFFIRMED AT A LATER HEARING, THAT THEY  
21 WERE PART OF THE CASE FOR THE FAILURE TO WARN CLAIM, WHICH IS  
22 ABOUT WHAT THE DEFENDANTS KNEW AND WHEN THEY KNEW IT. SHE SAID  
23 ANY AND ALL OF THE ALLEGED DEFECTS, INCLUDING THE ALGORITHM,  
24 INCLUDING NOTIFICATIONS, WERE PART OF THE CASE.

25 AND, IN FACT, DEFENDANTS SOUGHT AN INTERLOCUTORY APPEAL OF

1 THAT ORDER, PARTLY ON THE GROUNDS THAT THEY SAID IT WOULD  
2 EXPAND DISCOVERY BEYOND THE FEATURES THAT THEY BELIEVED PASSED  
3 MUSTER UNDER SECTION 230. SHE DENIED THAT REQUEST FOR  
4 CERTIFICATION.

5 THIS MATTER HAS BEEN DEALT WITH. IF WE ARE REOPENING IT,  
6 WE WILL NEED TO REBRIEF IT.

7 MR. DRAKE: JUST A FINAL POINT ON THAT, YOUR HONOR.  
8 OF COURSE, WHAT WE'RE HERE ON, OF COURSE, IS A PRODUCT  
9 LIABILITY CLAIM. YOUR HONOR WAS ANALYZING PRODUCT LIABILITY  
10 LAW AS TO WHAT ALLOWS ONE TO GET INTO EVIDENCE ABOUT ANOTHER  
11 PRODUCT, AND YOUR HONOR FOUND THAT THE PLAINTIFFS HAVE  
12 SATISFIED THEIR BURDEN ON SUBSTANTIAL SIMILARLY OVER OUR  
13 OBJECTION.

14 JUDGE GONZALEZ ROGERS'S ORDER ABOUT WHAT CONSTITUTES A  
15 PRODUCT IS VERY SPECIFIC, AND IT'S SPECIFIC FEATURES THAT  
16 CONSTITUTE PRODUCTS, AGE VERIFICATION, PARENTAL CONTROLS, THE  
17 FILTERS. THAT'S WHAT GIVES RISE TO THE PRODUCT LIABILITY  
18 CLAIMS.

19 THOSE ARE THE ONLY CLAIMS THAT HAVE PASSED A MOTION TO  
20 DISMISS AT THIS STAGE OF THE LITIGATION, AND THOSE ARE THE  
21 FEATURES THAT ARE GIVING RISE TO THE ALLEGED -- TO THE  
22 DISCOVERY THAT THE PLAINTIFFS WANT UNDER THEIR DESIGN DEFECT  
23 CLAIM.

24 AGAIN, IT HAS NOTHING TO DO WITH WHETHER THE ALGORITHM IS  
25 PART OF THE CASE AT SOME POINT OR NOT. THAT'S NOT WHAT WE'RE

1 HERE DEBATING.

2 WE'RE DEBATING A SPECIFIC DISCOVERY DISPUTE THAT'S  
3 PREMISED ON PRODUCT LIABILITY LAW, AND JUDGE GONZALEZ ROGERS IN  
4 HER ORDER COULDN'T BE MORE CLEAR AS TO WHAT THE FEATURES ARE  
5 THAT GIVE RISE AND THAT MAKE THESE SERVICES PRODUCTS.

6 THE COURT: ENUNCiate FOR ME CLEARLY WHY -- PUTTING  
7 ASIDE BUSINESS DOCUMENTS, BUSINESS PLANNING DOCUMENTS,  
8 MARKETING DOCUMENTS -- WHY TECHNICAL DOCUMENTS ON THE  
9 ALGORITHMS ARE RELEVANT UNDER FAILURE TO WARN.

10 MS. HAZAM: THE DECISION TO DESIGN THESE PRODUCTS AND  
11 THE FEATURES THAT COMprise THEM, INCLUDING THE ALGORITHM, IS  
12 INFORMED BY THE INTENDED EFFECT AND THE KNOWLEDGE OF THE EFFECT  
13 ON THE USER POPULATION, AND THEN ALTERATIONS OF THE DESIGN ARE  
14 SIMILARLY AFFECTED BY THOSE SAME CONCERNs.

15 SO THE IMPACT OF THE DESIGN ON THE USERS, ON THE HEALTH  
16 AND WELLBEING OF YOUTH, IS PART OF THE DESIGN DECISIONS.

17 WITHOUT REVEALING CONFIDENTIAL INFORMATION IN ANY WAY, WE  
18 KNOW THAT FROM THE DISCOVERY ALREADY PROVIDED IN THIS CASE, AND  
19 OUR COMPLAINT, IN FACT, ALLEGES AS MUCH.

20 SO THE DESIGN OF THE PRODUCT VERY MUCH DOES GO TO FAILURE  
21 TO WARN BY WAY OF KNOWLEDGE.

22 AND THAT'S TRUE IN A DRUG CASE AS MUCH AS IT WOULD BE IN A  
23 CASE ABOUT A PLATFORM, A SOCIAL MEDIA PLATFORM.

24 THE COURT: OKAY. SO I'VE HEARD BOTH SIDES. THANK  
25 YOU FOR THAT.

1           I PROBABLY SHOULD HAVE CLARIFIED IT THE FIRST TIME AROUND,  
2           BUT I'M CLARIFYING IT NOW. ALGORITHM IS INCLUDED IN THE LIST  
3           OF NAMED FEATURES. IT'S WITHIN THE SCOPE OF THE DOCUMENT  
4           REQUESTS AS PROPOUNDED AND AS BEING IDENTIFIED FOR SPECIFIC --  
5           SPECIFICITY FOR THE TECHNICAL DOCUMENTS.

6           MS. HAZAM: THANK YOU, YOUR HONOR.

7           MS. MACHOCK: YOUR HONOR, I DON'T MEAN TO BELABOR IT,  
8           BUT MAY I MAKE ONE MORE POINT?

9           THE COURT: OKAY.

10           MS. MACHOCK: I'M LOOKING AT PLAINTIFFS' CASES, AND  
11           EVEN THE CASES THAT GRANTED THE BROADEST EXTRATERRITORIAL  
12           DISCOVERY WERE VERY NARROWLY TARGETED TO SPECIFIC -- I KNOW YOU  
13           RULED THAT -- BUT TO SPECIFIC MODELS, AND THE COURTS IN THOSE  
14           CASES -- PLAINTIFFS WERE REQUIRED TO SHOW, AS THE THRESHOLD  
15           MATTER, WHY DISCOVERY INTO A SPECIFIC FOREIGN MODEL WAS  
16           RELEVANT TO THE CASE.

17           AFTER THAT THRESHOLD SHOWING, THE COURT THEN CONSIDERED  
18           WHETHER PROPORTIONALITY CONSIDERATIONS COUNSELLED FOR ITS  
19           FURTHER LIMITING DISCOVERY; RIGHT?

20           IN THIS CASE TODAY, PLAINTIFFS HAVE MADE THAT SHOWING OF  
21           RELEVANCE, TO THE EXTENT YOUR HONOR BELIEVES IT'S BEEN SHOWN,  
22           ONLY AS TO EACH VERIFICATION. THERE'S, THERE'S LITERALLY BEEN  
23           NO SHOWING WHATSOEVER THAT THERE IS ANY RELEVANT ALTERNATE  
24           DESIGNS, NO SPECIFIC MODEL OR THE EQUIVALENT IN THIS  
25           CIRCUMSTANCE, NO SPECIFIC FEATURES IN THEIR COUNTRIES, NOTHING

1 HAS BEEN SHOWN.

2 AND AS A MATTER OF LAW, IT IS PLAINTIFFS' BURDEN TO MAKE  
3 THAT THRESHOLD SHOWING, AND I THINK THAT'S PART OF THE PROBLEM  
4 HERE.

5 THE COURT: I DON'T THINK --

6 MS. MACHOCK: THERE'S NO --

7 THE COURT: I HEAR YOUR ARGUMENT, BUT I DON'T THINK,  
8 IN ORDER TO GET THE DISCOVERY THEY'RE AFTER, THEY HAVE TO GO  
9 THROUGH EVERY SINGLE NAMED FEATURE AND GIVE EXAMPLES OF EVERY  
10 SINGLE NAMED FEATURE IN EVERY SINGLE FOREIGN VERSION THEY WANT  
11 TO GO AFTER, BECAUSE IF THEY WENT THAT WAY, THEY PROBABLY WOULD  
12 DUMP A CHART OF 50 ADDITIONAL COUNTRIES WHERE THEY THINK  
13 FEATURES ARE RELEVANT, WHICH IS WORSE FOR YOU THAN THE WAY THIS  
14 IS WORKING OUT.

15 SO I -- BY -- THEY PROVIDED AT LEAST ENOUGH OF A BASIS TO  
16 OPEN DISCOVERY TO THE E.U., PLUS U.K., AND AUSTRALIAN VERSIONS  
17 FOR THE NAMED FEATURES PLAINTIFFS, AND I THINK BY  
18 CIRCUMSCRIBING IT THAT WAY, THAT WILL ADDRESS THE  
19 PROPORTIONALITY CONCERN.

20 ARE WE ALL CLEAR ON THIS MOTION? ANYTHING FURTHER,  
21 CLARIFICATION? ANY OTHER OPEN DISPUTES?

22 MS. TRUONG: NOTHING FROM ME, YOUR HONOR.

23 THE COURT: ALL RIGHT. WHO'S -- OKAY. NOW WE'RE  
24 GOING INTO THE TIME PERIOD, BUT LET'S, FOR THE BENEFIT OF THE  
25 COURT REPORTER, TAKE A SHORT BREAK.

1 THE CLERK: COURT IS IN A SHORT RECESS.

2 (RECESS FROM 2:12 P.M. UNTIL 2:21 P.M.)

3 THE CLERK: RECALLING 22-3047, IN RE: SOCIAL MEDIA  
4 ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY  
5 LITIGATION.

6 THE COURT: OKAY. SO LET'S DO 798, WHICH IS  
7 TIKTOK/BYTEDANCE TIME PERIOD.

8 MR. DRAKE: HELLO, YOUR HONOR.

9 THE COURT: IDENTIFY YOURSELVES FOR THE RECORD AGAIN,  
10 PLEASE.

11 MR. MURA: YES, YOUR HONOR.

12 ANDRE MURA AGAIN FOR THE PLAINTIFFS.

13 MR. DRAKE: GEOFFREY DRAKE, KING & SPALDING, FOR  
14 TIKTOK DEFENDANTS.

15 THE COURT: IN SOME WAYS WE'VE ALREADY DISCUSSED THIS  
16 MOTION. MY INCLINATION ON THIS ONE IS SIMILAR TO THE PREVIOUS  
17 BYTEDANCE RELATED MOTION, WHICH IS THAT YOU HAVE TWO DAYS TO  
18 IDENTIFY THE DOCUMENT REQUESTS THAT WOULD GO TO THIS, AGAIN,  
19 LIMITING IT TO NAMED FEATURES. OKAY?

20 LET ME ASK YOU THIS: WHY DO YOU REALLY NEED TO GO ALL THE  
21 WAY BACK TO 2012?

22 MR. MURA: WELL, THAT'S WHEN TOUTIAO BEGAN, AND  
23 THAT'S WHEN CERTAIN OF THE FEATURES WERE DEVELOPED.

24 THE COURT: WHICH FEATURES WERE DEVELOPED THAT EARLY?

25 MR. MURA: INFINITE SCROLL WAS DEVELOPED IN 2012.

1 SHORT VIDEOS WERE DEVELOPED IN 2014.

2 THE COURT: OKAY. ALL RIGHT.

3 SO YOU ALREADY KIND OF KNOW MY INCLINATION ON THIS MOTION.

4 HERE'S THE CHANCE TO TELL ME WHY I SHOULD CHANGE IT.

5 MR. DRAKE: SURE, YOUR HONOR.

6 I UNDERSTAND YOU AND HEAR YOU LOUD AND CLEAR ON YOUR  
7 FRUSTRATION WITH THE PARTIES ON COMPROMISE.

8 I DON'T KNOW HOW WE CAN COMPROMISE ANY MORE ON THIS  
9 PARTICULAR REQUEST THAN WHAT WE OFFERED THEM. WE OFFERED  
10 JANUARY 1, 2017. THAT'S FIVE MONTHS BEFORE TIKTOK EVER  
11 LAUNCHED IN THE UNITED STATES. IT ENCOMPASSES THE SAME YEAR  
12 THAT MUSICAL.LY ACQUIRED TIKTOK, INC. IN THE UNITED STATES.

13 AND WE OFFERED TO GO THROUGH TO FEBRUARY 14TH OF 2023 WHEN  
14 THE MASTER COMPLAINT WAS FILED.

15 I'M NOT AWARE OF ANY CASE LAW, INCLUDING YOUR HONOR'S  
16 RECENT DECISION IN THE CROCS CASE, THAT WOULD START ALL  
17 DISCOVERY FIVE YEARS PRIOR TO LAUNCH OF A PRODUCT BASED SOLELY  
18 ON THE FACT THAT ANOTHER PRODUCT -- AND, AGAIN, WITH RESPECT TO  
19 TOUTIAO, THE PLAINTIFFS HAVE NOT CITED A SINGLE DOCUMENT THAT  
20 ACTUALLY TALKS ABOUT TOUTIAO. I KNOW YOUR HONOR DOESN'T HAVE  
21 THE ACTUAL DOCUMENTS, BUT WE HAVE READ THEM, AND THE ONES THAT  
22 ARE CITED IN THE BRIEF DO NOT DISCUSS THAT PLATFORM.

23 SO THE IDEA OF GOING FIVE YEARS PRIOR TO LAUNCH CONCERNING  
24 ANOTHER PRODUCT FOR WHICH THEY ARE SPECULATING AND NOT  
25 INCLUDING ANY DOCUMENTS -- THAT'S A NEWS AGGREGATOR, YOUR

1 HONOR. IT'S NOT EVEN A SOCIAL MEDIA APP IN THE SAME SENSE THAT  
2 TIKTOK IS.

3 DOUYIN ITSELF WAS STARTED IN 2016. AT BEST, BASED ON YOUR  
4 HONOR'S PRIOR RULING, THAT WOULD BE A START DATE.

5 BUT I DON'T KNOW HOW TO -- I DON'T KNOW HOW TO CONTINUE TO  
6 NEGOTIATE AND COMPROMISE. WE'VE OFFERED A VERY SIGNIFICANT  
7 COMPROMISE PRIOR TO LAUNCH THAT WE THOUGHT SHOULD RESOLVE THE  
8 ISSUE. PLAINTIFFS WANT TO GO BACK FIVE MORE YEARS. IT'S HARD  
9 TO SAY WHERE IT STOPS.

10 BUT THAT WAS OUR POSITION, YOUR HONOR, AND WE THINK THAT'S  
11 THE WAY TO GO HERE.

12 THE COURT: SO THERE'S ONLY ONE FEATURE TO TOUTIAO  
13 THAT GOES BACK TO 2012? IS THAT WHAT I'M HEARING?

14 MR. MURA: WELL, YES, AND THE RECOMMENDATION  
15 ALGORITHMS.

16 MR. DRAKE: OF COURSE, YOUR HONOR, IT'S AN APP. IT  
17 HAS A RECOMMENDATION ALGORITHM. EVERY APP ON YOUR PHONE HAS AN  
18 ALGORITHM.

19 THERE'S BEEN NO SHOWING THAT IT HAS ANYTHING TO DO WITH  
20 THE TIKTOK ALGORITHM AS IT EXISTS TODAY 10 YEARS, 15 YEARS  
21 LATER, AND I DON'T SEE ANY DOCUMENTS IN THEIR PAPERS THAT  
22 RELATE TO IT.

23 SO I DON'T SEE THE CONNECTION THERE, THE SUBSTANTIAL  
24 SIMILARITY, THE FINDING THAT THE PLAINTIFFS BEAR THE BURDEN TO  
25 SHOW.

1                   MR. MURA: YOUR HONOR, WE DID CITE STUDIES AND WE DID  
2 PRESENT THE EVIDENCE THAT WE HAD, AND IF WE HAD TO PRESENT MORE  
3 EVIDENCE, WE COULD, AND WE WOULD PROBABLY POINT TO THE RECENT  
4 FILINGS OF TIKTOK AND BYTEDANCE BEFORE THE D.C. CIRCUIT WHERE  
5 THEY TALK ABOUT THEIR APPS.

6                   I MEAN, IN THOSE FILINGS, IN ONE OF THEM IN 2020, I MEAN,  
7 THERE'S A DISCUSSION ABOUT TOUTIAO'S RECOMMENDATION ENGINE HAS  
8 INFLUENCED THE CORE TECHNOLOGY FOR SEVERAL OF BYTEDANCE'S OTHER  
9 APPS, BUILDING ON THE EXPERIENCE FROM TOUTIAO AND ITS  
10 RECOMMENDATION ENGINE, AND THEN IT TALKS ABOUT HOW IT FORMED  
11 DOUYIN.

12                  AND THEN IT ALSO SAYS, WHEN IT LAUNCHED TIKTOK, BYTEDANCE  
13 LEVERAGED ITS EXPERIENCE WITH TOUTIAO AND DOUYIN.

14                  SO THIS IS NOT JUST SORT OF SOME LAUNCH IN 2017 THAT  
15 STARTS A NEW PRODUCT. IT'S BUILDING ON THE BASIC CORE  
16 COMPONENTS AND BUILDING BLOCKS, AND COURTS ROUTINELY ALLOW  
17 DISCOVERY INTO THOSE TYPES OF COMPONENT PARTS, BUILDING BLOCKS,  
18 WHEN THEY HAVE THE SIMILARITY HERE.

19                  THERE ARE, OF COURSE, DIFFERENCES. THOSE DIFFERENCES ALSO  
20 MATTER TO KNOWLEDGE, INTENT, NOTICE, ALTERNATIVE DESIGN.

21                  AND THESE ARE THE SAME ARGUMENTS THAT THE COURT HEARD AT  
22 THE PRIOR -- AS PART OF THE PRIOR MOTION. SO CONSISTENT WITH  
23 THAT RULING, WE THINK THAT GOING BACK TO 2012 MAKES SENSE.

24                  NOW, WE'RE GOING TO BE IDENTIFYING THE RFP'S, WHICH IS  
25 GOING TO LIMIT THE BURDEN.

1 I DON'T THINK THE NUMBER OF CUSTODIANS IMPACTED IS THAT  
2 GREAT, EITHER.

3 AND GIVEN THE RETENTION POLICY OF THE COMPANY, AGAIN, I  
4 THINK A LOT OF THIS IS GOING TO BE RESOLVED AS WE WORK THROUGH  
5 THIS IN THE NEXT TWO DAYS, AND IF WE HAVE FURTHER ISSUES, WE  
6 CAN COME BACK TO YOU.

7 BUT I THINK THAT'S WHERE I WOULD -- AND WE HOPE NOT TO  
8 COME BACK TO YOU, BUT I THINK THAT'S WHERE WE WOULD AIM TO  
9 START AND HOPEFULLY END.

10 MR. DRAKE: YOUR HONOR, THIS ARGUMENT IS LIKE FILING  
11 A LAWSUIT INVOLVING A FORD F150 AND ASKING FOR DISCOVERY INTO  
12 THE MODEL T BECAUSE IT USED AN INTERNAL COMBUSTION ENGINE.

13 THERE'S VERY LIMITED CASE LAW THAT WOULD SUPPORT THIS  
14 PARTICULAR ARGUMENT THAT COUNSEL IS MAKING. I WON'T BELABOR  
15 THE POINT.

16 JANUARY 2017 SEEMS LIKE A VERY REASONABLE DATE TO START  
17 DISCOVERY IN A CASE INVOLVING INDIVIDUALS WHO USED AN APP THAT  
18 STARTED AND WAS NEVER AVAILABLE PRIOR TO MAY OF 2017.

19 THE COURT: DO YOU HAVE ANYTHING MORE TO SAY, OR --

20 MR. MURA: NO, YOUR HONOR, UNLESS YOUR HONOR HAS  
21 QUESTIONS.

22 THE COURT: SO ON THE TIME PERIOD, I AM A LITTLE  
23 CONCERNED THAT GOING ALL THE WAY BACK TO 2012 WHERE TOUTIAO,  
24 AT LEAST AS AN APP, IS DIFFERENT ENOUGH FROM TIKTOK AND DOUYIN  
25 THAT BOTH RELEVANCE AND PROPORTIONALITY STARTS TO GET

1 IMPLICATED THE FURTHER BACK YOU GET INTO TIME.

2 THAT'S NOT TO SAY THAT DISCOVERY FROM TOUTIAO ISN'T  
3 APPROPRIATE AT SOME -- SOMEWHERE IN THAT TIMEFRAME.

4 DOES ANYBODY KNOW WHAT MONTH IN 2016 DOUYIN LAUNCHED?

5 MR. DRAKE: I DON'T KNOW THAT I HAVE IT ON ME, YOUR  
6 HONOR.

7 THE COURT: ANYONE IN THE ROOM?

8 MR. MURA: SEPTEMBER 2016 IS WHAT I THINK IS CORRECT.

9 THE COURT: OKAY.

10 MR. DRAKE: AT LEAST IT WAS TOWARD THE END OF THE  
11 YEAR.

12 THE COURT: RIGHT. OKAY. SO BASED ON THE -- SO AT  
13 SOME LEVEL THE COURT WILL -- I THINK YOU ALL LOOKED AT MY  
14 BIOGRAPHY AND MY BACKGROUND. GIVEN MY EXPERIENCE, BOTH AS A  
15 SOFTWARE DEVELOPER ENGINEER AND HAVING LITIGATED, WE ALL KNOW  
16 THAT DEVELOPMENT WORK HAPPENS, AT LEAST FOR SOME PERIOD OF  
17 TIME, BEFORE A PRODUCT IS LAUNCHED.

18 SO FOR THE TIME PERIOD HERE, FOR THE LIMITED DISCOVERY,  
19 THE DOCUMENT REQUESTS THAT YOU CAN IDENTIFY, THE TIME PERIOD IS  
20 GOING TO GO BACK TO JANUARY 1, 2016. THAT SHOULD COVER BOTH  
21 TOUTIAO AND DOUYIN. IT'LL COVER A PERIOD OF TIME WHILE DOUYIN  
22 WAS ORIGINALLY IN DEVELOPMENT BEFORE IT LAUNCHED, AND I THINK  
23 THAT'S -- THAT BALANCES RELEVANCE AND PROPORTIONALITY FOR  
24 TOUTIAO BECAUSE IT CUTS OFF A LOT OF THE ANCIENT HISTORY OF  
25 THAT COMPANY, BUT THEN CAPTURES WHAT I THINK IS A RELEVANT AND

1 PROPORTIONAL TIME PERIOD FOR BOTH THOSE SERVICES GOING FORWARD.

2 LIKE I SAY, YOU KNOW, YOU DON'T HAVE THE DOCUMENTS YET,  
3 AND SO PRESUMABLY, YOU KNOW, YOU'RE GOING TO BE LOOKING AT THE  
4 DOCUMENTS, AND IF YOU FIND SOMETHING FROM 2016 THAT'S REFERRING  
5 TO SOMETHING BACKWARDS IN TIME EVEN FURTHER, I ASSUME YOU'RE  
6 GOING TO BE REASONABLE AND WORK OUT TARGETED FOLLOW-UP  
7 DISCOVERY IF IT'S WARRANTED BASED ON WHAT'S ACTUALLY PRODUCED.

8 OKAY. ANY QUESTION ON TIME PERIOD HERE?

9 MR. DRAKE: NO, YOUR HONOR.

10 MR. MURA: I DO HAVE A QUESTION, YOUR HONOR.

11 THE COURT: YES.

12 MR. MURA: JUST AS IT RELATES TO MUSICAL.LY, WHICH  
13 WAS LAUNCHED IN 2014.

14 THE COURT: THEY WERE ACQUIRED -- SAME TIME PERIOD.

15 MR. MURA: OKAY. BUT -- OKAY. I'LL TAKE THE COURT'S  
16 CAVEAT THAT IF WE SEE THINGS, WE CAN NEGOTIATE AND COME BACK.

17 THE COURT: RIGHT. AS PRESENTED RIGHT NOW, THAT'S MY  
18 RULING.

19 MR. MURA: THANK YOU, YOUR HONOR.

20 MR. DRAKE: THANK YOU.

21 THE COURT: OKAY. FIRST I'M GOING TO HEAR FROM SNAP.  
22 LET'S DO DOCKET 830, THE TIME PERIOD ARGUMENT FOR SNAP.

23 MR. BILSBORROW: JAMES BILSBORROW FOR THE PLAINTIFFS.

24 THE COURT: GOOD AFTERNOON.

25 MR. RICE: ROWLEY RICE FOR SNAP, YOUR HONOR.

1                   THE COURT: OKAY. SO BASED ON THE BRIEFING, IT LOOKS  
2                   LIKE YOU ALL ACTUALLY IDENTIFIED -- TELL ME IF I'M MISSING  
3                   ANY -- BUT I SEE EPHEMERAL MESSAGING, SNAPSCORE, SNAPKIDZ,  
4                   STORIES, THE DISCOVER FEATURE, FILTERS, NOTIFICATIONS TO USERS,  
5                   LENSES, TROPHIES, AGE VERIFICATION, AND SAFETY CENTER AS THE  
6                   SPECIFIC FEATURES THAT ARE IN DISPUTE HERE KIND OF FOR  
7                   TECHNICAL DISCOVERY.

8                   IS THAT RIGHT?

9                   MR. BILSBORROW: THOSE ARE THE FEATURES THAT WE SAY  
10                  WERE EITHER RESEARCHED, DEVELOPED, OR COMMERCIALIZED PRIOR TO  
11                  2015, WHICH IS SNAP'S PROPOSED BEGINNING DATE.

12                  THE COURT: RIGHT.

13                  MR. RICE: YOUR HONOR, MAY I CLARIFY ONE THING, WHICH  
14                  IS THAT FOR SEVERAL OF THOSE FEATURES, THEY WERE LAUNCHED AFTER  
15                  2015. AND SO THE PARTIES DEFER -- THE PLAINTIFFS' POSITION, WE  
16                  DEFER ON THE RELEVANCE OF THE DISCOVERY GOING BACK BEFORE 2015.

17                  BUT THE FEATURES YOU LISTED INCLUDES A MIX OF CERTAIN  
18                  FEATURES THAT WERE LAUNCHED BEFORE 2015 AND ONES THAT WERE  
19                  LAUNCHED AFTER.

20                  THE COURT: OKAY. SO LET ME MAKE SURE I'VE GOT THE  
21                  DATES CORRECT. EPHEMERAL MESSAGING AND SNAPSCORE WERE LAUNCHED  
22                  IN 2011? IS THAT RIGHT? JUST AS AN EXAMPLE.

23                  MR. BILSBORROW: THEY WERE AT LEAST DEVELOPED IN  
24                  2011.

25                  THE COURT: AND LAUNCHED --

1 MR. BILSBORROW: CLOSE IN TIME TO WHEN SNAPCHAT WAS  
2 COMMERCIALIZED.

3 THE COURT: OKAY.

4 MR. RICE: THEY WERE INCLUDED IN THE SNAPCHAT APP  
5 THAT WAS RELEASED IN 2011, YES, YOUR HONOR.

6 THE COURT: JUST SO I KNOW, SNAPKIDZ AND STORIES WERE  
7 LAUNCHED AND/OR DEVELOPED IN 2013?

8 MR. BILSBORROW: ACCORDING TO THE COMPLAINT, YES, AND  
9 THE INFORMATION WE HAVE.

10 THE COURT: IS THAT CORRECT?

11 MR. RICE: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: OKAY. SO BECAUSE YOU HELPFULLY HAVE  
13 PROVIDED ME WITH EXACT DATES FOR EACH OF THE FEATURES THAT ARE  
14 AT ISSUE FOR THIS DISCOVERY DISPUTE, I'M NOT GOING TO GRANT  
15 ANYONE BLANKET DISCOVERY ACROSS ALL FEATURES FOR ALL TIME, FOR  
16 JUST ONE GIANT TIMEFRAME. I'M GOING TO BASICALLY TRIGGER THE  
17 DISCOVERY BASED ON THE DATE THAT THE FEATURE WAS, EACH  
18 INDIVIDUAL FEATURE WAS LAUNCHED. ALL RIGHT?

19 SO, FOR EXAMPLE, THE TIMEFRAME FOR DISCOVERY ON Ephemeral  
20 MESSAGING AND SNAPSCORE GOES BACK TO 2011, JANUARY 1, 2011;  
21 TIMEFRAME FOR SNAPKIDZ AND STORIES GOES BACK TO JANUARY 1,  
22 2013; TIMEFRAME FOR DISCOVER FEATURE GOES BACK TO JANUARY 1,  
23 2014; TIMEFRAME FOR FILTERS GOES BACK TO JANUARY 1, 2013;  
24 TIMEFRAME FOR NOTIFICATION TO USERS GOES BACK TO JANUARY 1,  
25 2014; LENSES AND TROPHIES, JANUARY 1, 2015; AGE VERIFICATION,

1 JANUARY 1, 2013; AND SAFETY CENTER, I WAS GIVEN AN EXACT DATE,  
2 FEBRUARY 1, 2015.

3 MR. BILSBORROW: YOUR HONOR, JUST --

4 MR. RICE: YOUR HONOR, MAY I --

5 MR. BILSBORROW: I WAS JUST GOING TO MAKE ONE POINT.

6 THE COURT: SURE.

7 MR. BILSBORROW: THE LAUNCH DATE IS, OF COURSE, A  
8 RELEVANT DATE.

9 BUT PART OF OUR ARGUMENT IS THAT THE LAUNCH DATE -- AS  
10 YOUR HONOR JUST NOTED, THERE'S A PERIOD OF TIME BEFORE THE  
11 LAUNCH DATE WHERE THE RESEARCH AND DEVELOPMENT INTO THE PRODUCT  
12 OCCURS. SO, FOR EXAMPLE, WITH LENSES LAUNCHING IN 2015, WE  
13 WOULD ARGUE THAT WE SHOULD AT LEAST GET SOME PERIOD OF TIME  
14 BEFORE THE LAUNCH BECAUSE WHAT SNAP KNEW ABOUT HOW THE LENSES  
15 WOULD AFFECT SNAPCHAT USERS IS EXTREMELY RELEVANT TO OUR CASE.

16 THE COURT: OKAY. SO YOU WANT TO --

17 MR. RICE: MAY I?

18 THE COURT: GO AHEAD.

19 MR. RICE: THANK YOU, YOUR HONOR.

20 I THINK, YOUR HONOR, OUR COUNTERPOINT TO THAT WOULD BE THE  
21 PROPORTIONALITY CONSIDERATIONS YOUR HONOR HAS MENTIONED HERE IN  
22 THAT WHILE SOME OF THESE FEATURES WERE RELEASED BEFORE 2015,  
23 ALL OF THESE FEATURES WERE EMPLOYED IN THE PLATFORM AFTER 2015,  
24 AND IN MANY CASES WHAT PLAINTIFFS HAVE POINTED TO AS THE KEY  
25 ALLEGATIONS IN THEIR COMPLAINT ARE ALTERATIONS TO THOSE

1 FEATURES THAT WERE MADE AFTER 2015.

2 SO, FOR INSTANCE, WITH RESPECT TO THE STORIES FEATURE,  
3 PLAINTIFFS HAVE FOCUSED ON AN ALLEGED CHANGE TO THE WAY  
4 STORIES OPERATED IN 2016 THAT THEY SAY IS SIGNIFICANT.

5 SO FOR ALL OF THESE FEATURES, THEY REMAIN PRESENT ON THE  
6 PLATFORM AND HAVE BEEN CONSTANTLY UPDATED, AND SO WE BELIEVE  
7 THAT POST -- THE DISCOVERY BEGINNING ON JANUARY 1, 2015 IS  
8 PROPORTIONATE TO GIVE PLAINTIFFS ADEQUATE DOCUMENT DISCOVERY  
9 INTO ALL OF THESE FEATURES THAT ARE AT ISSUE.

10 MR. BILSBORROW: YOUR HONOR, WE DISAGREE WITH THAT.

11 SO THE EPHEMERAL MESSAGING, IT BASICALLY WORKS IN THE SAME  
12 WAY AS IT DID WHEN IT LAUNCHED IN 2011. THE SNAPSORE  
13 BASICALLY WORKS THE SAME WAY IT DID WHEN IT LAUNCHED IN 2011.

14 YES, SOME OF THESE FEATURES WERE UPDATED, SOME ASPECTS  
15 HAVE CHANGED.

16 BUT WE NEED TO UNDERSTAND THE DESIGN DECISIONS THAT SNAP  
17 UNDERSTOOD AND MADE WHEN THEY LAUNCHED THE FEATURE INITIALLY,  
18 AND TO THE EXTENT THEY CHANGED THE FEATURE, OF COURSE WE WANT  
19 DISCOVERY ON THAT AS WELL.

20 MR. RICE: AND, YOUR HONOR, IF I MAY RESPOND?

21 THE ISSUE -- THE MAJORITY OF PLAINTIFFS IN THIS CASE, THE  
22 VAST MAJORITY, BEGAN USING SNAPCHAT AFTER 2015, IN MANY CASES  
23 MUCH LATER. SO THE VERSION OF SNAPCHAT THAT PLAINTIFFS ARE  
24 SEEKING, THE APPLICATION WAS LAUNCHED IN 2011 OR 2012, THAT'S  
25 NOT THE VERSION THAT WAS EXPERIENCED BY THE PLAINTIFFS AT ISSUE

1 IN THIS CASE.

2 THE COURT: YEAH, THAT -- I MEAN, I CAN ALREADY HEAR  
3 THE OTHER SIDE WHEN THEY BRIEF THE ISSUE, WHICH IS IT GOES TO  
4 ALTERNATIVE AVAILABLE FEATURES AND FEASIBILITY OF ALTERNATIVES;  
5 RIGHT?

6 SO -- ADDRESS THE FACT THAT YOUR ALLEGATIONS FOCUS ON THE  
7 CHANGES TO STORIES IN 2016. DO YOU REALLY NEED DISCOVERY ON  
8 STORIES BEFORE THOSE CHANGES?

9 MR. BILSBORROW: YES, WE ABSOLUTELY DO, BECAUSE  
10 STORY -- THE STORY FUNCTION AS IT WAS ORIGINALLY LAUNCHED WAS  
11 ADDICTIVE, IT CAUSED COMPULSIVE USE. THE WAYS THAT THEY  
12 CHANGED STORIES MADE THAT WORSE, WE ARGUE.

13 BUT WE, WE NEED THE -- WE NEED TO UNDERSTAND WHAT SNAP  
14 KNEW WHEN THEY INITIALLY LAUNCHED THE FEATURE AND, OF COURSE,  
15 HOW IT CHANGED OVER TIME. IT GOES TO THE CORE -- IT GOES TO  
16 THE CORE OF OUR CASE, YOUR HONOR.

17 MR. RICE: YOUR HONOR, FOR ALL OF THESE FEATURES,  
18 PARTICULARLY FOR THE STORIES FEATURE, WHEN SNAP IS LOOKING BACK  
19 AT A FEATURE AND MAKING CHANGES OVER AN EIGHT YEAR PERIOD,  
20 CONSTANTLY UPDATING AND REVISING THIS APPLICATION, WE SUBMIT TO  
21 YOUR HONOR THAT THAT PERIOD IS GOING TO COVER THE  
22 PROPORTIONALITY PERIOD FOR DISCOVERY.

23 WE'RE TALKING -- THIS IS AN EIGHT YEAR PERIOD OF DESIGN,  
24 YOUR HONOR, IN A COMPANY THAT'S ONLY EXISTED SINCE 2011. AND  
25 SO WHAT PLAINTIFFS PROPOSE IS, IN EFFECT, GOING BACK TO

1 DISCOVERY TO THIS COMPANY'S CORPORATE EXISTENCE.

2 THE COURT: WELL, BUT ONLY AS TO -- NOT EVEN AS TO  
3 STORIES, BUT ONLY AS TO EPHEMERAL MESSAGING AND SNAPSORE.

4 MR. RICE: BUT THE PROPOSAL WITH RESPECT TO  
5 CUSTODIANS AND SEARCH TERMS, THE PLAINTIFFS WANT US TO RUN  
6 SEARCH TERMS ACROSS ALL CUSTODIANS AND ALL PROPOSED SEARCH  
7 TERMS.

8 AND WE DO DOCUMENT COLLECTION ON A CUSTODIAN-BY-CUSTODIAN  
9 BASIS, COLLECTING ALL OF THEIR DOCUMENTS, SO LIMITING THE TIME  
10 PERIOD FOR ISOLATING THE NAMED FEATURES WILL STILL REQUIRE US  
11 TO REVIEW A LARGE NUMBER OF DOCUMENTS AND FILTER OUT  
12 NON-RESPONSIVE ONES.

13 THE COURT: BUT I SAW THERE WAS SOME DISPUTE ABOUT  
14 WHEN THE START DATE FOR CUSTODIAN SEARCHES SHOULD BE, AND IF --  
15 WHAT ARE THE ODDS THAT A CUSTODIAN HAS A SIGNIFICANT NUMBER OF  
16 DOCUMENTS THAT PREDATE THEIR EMPLOYMENT?

17 MR. BILSBORROW: WELL, YOUR HONOR, NOT ONLY THAT, BUT  
18 WE'VE ONLY IDENTIFIED A TOTAL OF SEVEN OR EIGHT CUSTODIANS THAT  
19 EVEN PREDATE -- THAT THEIR EMPLOYMENT PREDATES 2017.

20 NOW, SNAP'S ONLY AGREED TO GIVE US ONE OF THOSE  
21 CUSTODIANS, THE FOUNDER AND CEO, WHOSE DOCUMENTS WOULD BE  
22 HIGHLY RELEVANT.

23 BUT EVEN IF WE GOT EVERYTHING WE WANTED, THERE'S STILL  
24 ONLY SEVEN CUSTODIANS WHO PREDATE 2015. THERE'S ONLY TWO TOTAL  
25 CUSTODIANS THAT WE'VE IDENTIFIED THAT GO BACK TO 2011, AND THEY

1 ARE BOTH TWO OF THE FOUNDERS OF THE COMPANY.

2 MR. RICE: YOUR HONOR, MAY I?

3 THE COURT: OKAY.

4 MR. RICE: I WOULD JUST ADD THAT IN ADDITION TO  
5 BURDEN, IT'S DIFFICULT TO ASSESS THE PRECISE BURDEN HERE  
6 BECAUSE THE PARTIES ARE AT AN IMPASSE, HAVE BEEN MEETING AND  
7 CONFERRING AND ARRIVING AT AN IMPASSE REGARDING THE CUSTODIAN  
8 ISSUE.

9 BUT IN ADDITION WHAT WE'RE TALKING ABOUT HERE GOES BEYOND  
10 CUSTODIAL SEARCHES TO TARGET COLLECTIONS AS WELL, WHICH DOES  
11 ENTAIL AN ADDITIONAL BURDEN THE FARTHER BACK WE HAVE TO GO IN  
12 TIME, PERSONNEL LEAVE THE COMPANY, FILES ARE REORGANIZED,  
13 DEPARTMENTS CHANGE.

14 IT IS ADDITIONAL WORK TO GO BACK OVER NOW 13 YEARS TO  
15 IDENTIFY DOCUMENTS FROM 2011.

16 THE COURT: BUT EVEN UNDER YOUR OWN PROPOSAL, YOU'RE  
17 GOING BACK A SIGNIFICANT NUMBER OF YEARS AS WELL.

18 OKAY. SO FOR PURPOSES OF BOTH ADDRESSING PROPORTIONALITY  
19 PRIMARILY HERE, I'M GIVING YOU UNTIL JANUARY 1ST OF EACH OF THE  
20 YEARS MENTIONED, WHICH SHOULD COVER SOME OF THE TIME PERIOD  
21 BEFORE, FOR EXAMPLE, LENSES WAS ACTUALLY LAUNCHED. ALL RIGHT?  
22 PRESUMABLY SOME OF THEM MAY HAVE BEEN LAUNCHED EARLY IN THE  
23 YEAR, SOME OF THEM MAY HAVE BEEN LAUNCHED TOWARDS THE END OF  
24 THE YEAR.

25 IF YOU FIND IN THE DOCUMENT PRODUCTION, YOU KNOW,

1 REFERENCES TO EARLIER STUDIES, DOCUMENTS AND THINGS THAT ARE  
2 RELEVANT, THERE'S NOTHING STOPPING YOU FROM SERVING FOLLOW-UP  
3 DOCUMENT REQUESTS AND ASKING FOR THINGS AND THEN WORKING OUT  
4 WITH THE OTHER SIDE FOR THINGS AT AN EARLIER TIME PERIOD.

5 BUT ON THE PRESENT RECORD, WE'RE GOING TO GO WITH  
6 JANUARY 1 OF THE YEAR THAT THE FEATURE WAS LAUNCHED. OKAY?

7 AND I THINK THAT ADDRESSES PROPORTIONALITY AND RELEVANCE  
8 TO SOME EXTENT, TOO.

9 OKAY. AND I DON'T THINK YOU SHOULD BE LIMITING CUSTODIAL  
10 SEARCHES JUST BASED ON THEIR DATE OF EMPLOYMENT. IF A  
11 CUSTODIAN HAPPENS TO HAVE DOCUMENTS, IT'S PROBABLY UNLIKELY,  
12 BUT IF THEY HAVE A LOT OF DOCUMENTS THAT PREDATE THEIR DATE OF  
13 EMPLOYMENT AND THEY'RE RELEVANT, THEY SHOULD BE PRODUCED.  
14 THERE'S NO REASON NOT TO. I DON'T ANTICIPATE THERE WILL BE A  
15 HUGE VOLUME OF THOSE ANYWAY.

16 OKAY. ANY QUESTIONS, NEED FOR CLARIFICATION ON THIS  
17 PARTICULAR ISSUE?

18 MR. BILSBORROW: JUST IN PART, YOUR HONOR.

19 SO THERE ARE SOME REQUESTS THAT AREN'T SPECIFIC TO THE  
20 NAMED FEATURES; RIGHT? SO THERE ARE REQUESTS THAT GO TO SNAP'S  
21 MARKETING AND BUSINESS STRATEGIES, WHICH WE CLAIM WERE  
22 DEVELOPED PRIOR TO 2015.

23 SNAP WENT FROM 0 TO 100 MILLION USERS, MANY OF THEM  
24 MINORS, FROM 2011 TO 2015.

25 AND SO SNAP'S POSITION HAS BEEN, YOU DON'T GET ANYTHING

1 BEFORE 2015.

2 OUR POSITION HAS BEEN, WE WOULD LIKE TO NEGOTIATE ON AN  
3 RFP-BY-RFP BASIS. WHERE RFP'S WOULD SEEK RELEVANT INFORMATION  
4 THAT GOES FROM 2011 TO 2015, WE'D LIKE TO NEGOTIATE THAT.  
5 THEY'VE SHUT US DOWN.

6 SO WHERE WE DON'T HAVE AN RFP THAT INVOLVES A NAMED  
7 FEATURE, BUT SEEKS INFORMATION ON A PRACTICE, LIKE A MARKETING  
8 PRACTICE THAT IS CLEARLY RELEVANT IN THE CASE, WE THINK IT'S  
9 APPROPRIATE FOR US TO GO BACK BEFORE 2015.

10 MR. RICE: MAY I RESPOND, YOUR HONOR?

11 THE COURT: UM-HUM.

12 MR. RICE: YOUR HONOR, DOCUMENT REQUESTS THAT DO NOT  
13 ADDRESS THE NAMED FEATURES, WHEN WE TALK OF THE RELEVANCE AND  
14 PROPORTIONALITY ANALYSIS, FALL EVEN FURTHER AFIELD, ESPECIALLY  
15 WHEN WE LOOK AT THE ALLEGATIONS IN PLAINTIFFS' COMPLAINT.

16 THE ALLEGATIONS IN PLAINTIFFS' COMPLAINT ARE BASED  
17 PRIMARILY ON RESEARCH DONE BY SNAP AND SNAPCHAT THAT OCCURRED  
18 AFTER 2015, THAT OCCURRED IN 2019, 2020, 2021.

19 FOR INSTANCE, WITH RESPECT -- MY COLLEAGUE MENTIONED  
20 MARKETING, FOR INSTANCE. THE SCHOOL DISTRICTS' COMPLAINT  
21 DISCUSSES THE SNAP TO SCHOOL CAMPAIGN AS A BIG POINT OF  
22 CONTENTION. THAT CAMPAIGN WAS IN 2021, YOUR HONOR.

23 SO WE DON'T BELIEVE IT'S PROPORTIONATE TO THE CASE FOR US  
24 TO GO BACK AND LOOK FOR PRE-2015 DOCUMENTS ON THE SUBJECTS WHEN  
25 THAT EIGHT YEAR PERIOD WOULD CAPTURE THE TYPES OF DOCUMENTS

1 THAT PLAINTIFFS ARE LOOKING FOR.

2 THE COURT: GO AHEAD.

3 MR. BILSBORROW: I WAS GOING TO SAY TWO THINGS.

4 FIRST OF ALL, AGAIN, THERE'S VERY FEW CUSTODIANS WE'VE  
5 IDENTIFIED THAT WOULD EVEN HAVE THOSE DOCUMENTS.

6 BUT OUR COMPLAINT INCLUDES ALLEGATIONS ABOUT HOW SNAPCHAT  
7 WAS, WAS USED PRIOR TO 2015. FOR EXAMPLE, ON PAGE 1 OF OUR  
8 BRIEF, WE TALK ABOUT HOW THE C-SUITE AT SNAP REALIZED THAT THE  
9 SNAPCHAT WAS BEING USED PRIMARILY IN SCHOOLS, BY HIGH SCHOOL  
10 STUDENTS, AND THEY DECIDED TO TRY TO INCREASE USE BY HIGH  
11 SCHOOL STUDENTS.

12 THAT GOES DIRECTLY TO OUR SCHOOL DISTRICT COMPLAINTS, AND  
13 THAT'S A 2012 ALLEGATION DATE.

14 AND SO WE NEED, WE NEED TO BE ABLE TO GO BACK TO THAT TIME  
15 PERIOD WITH APPROPRIATE RFP'S.

16 MR. RICE: YOUR HONOR, FOR THE ALLEGATIONS AT ISSUE  
17 HERE -- MR. BILSBORROW MENTIONED SCHOOLS. THE SCHOOL DISTRICTS  
18 ARE -- THE FOCUS IS ON THE CONDUCT THAT HAS HAPPENED RECENTLY.

19 FOR THE PLAINTIFFS, MR. BILSBORROW MENTIONED MARKETING.  
20 THE MARKETING THAT THE VAST MAJORITY OF PLAINTIFFS WOULD HAVE  
21 EXPERIENCED IS DATED AFTER 2017, AFTER 2018, AND SO IT'S  
22 DISPROPORTIONATE FOR US TO GO BACK AND LOOK FOR -- TO IDENTIFY  
23 A STRAY DOCUMENT THAT MAY OR MAY NOT BEAR ON PLAINTIFFS'  
24 ALLEGATIONS WHEN WE'VE SELECTED ALREADY A LARGE -- AN EIGHT  
25 YEAR PERIOD OF DISCOVERY IS A SIGNIFICANT PERIOD, YOUR HONOR,

1 THAT WILL LIKELY CAPTURE VERY WELL THE UNIVERSE OF DOCUMENTS  
2 THAT PLAINTIFFS ARE LOOKING FOR.

3 THE COURT: OKAY. SO MY RULING ON TIMEFRAME BY  
4 FEATURES APPLIES TO MARKETING, OR I'LL CALL THEM BUSINESS  
5 RELATED DOCUMENTS, NOT JUST TECHNICAL DOCUMENTS.

6 IN OTHER WORDS, IF THERE ARE SPECIFIC MARKETING DOCUMENTS  
7 THAT DISCUSS, MENTION THE FEATURES THAT WE JUST -- WHATEVER 12  
8 OR SO FEATURES THAT I RATTLED OFF AT THE TOP OF THE HEARING,  
9 THEN THOSE ARE WITHIN THE TIMEFRAME AND THEY'RE DISCOVERABLE.

10 GENERAL MARKETING OR GENERAL ADVERTISEMENT THAT DOESN'T  
11 TALK ABOUT THOSE FEATURES, YOU ONLY GET BACK TO JANUARY 1ST,  
12 2015.

13 NOW, AGAIN, NOTHING IS STOPPING YOU FROM SERVING FOLLOW-UP  
14 DOCUMENT -- IF THERE'S A SPECIFIC HOT DOCUMENT THAT YOU THINK  
15 REQUIRES FOLLOW-UP DISCOVERY, NOTHING IS STOPPING YOU FROM  
16 SERVING A DOCUMENT REQUEST SAYING, WE WANT ALL THE DOCUMENTS  
17 RELATED TO THIS DOCUMENT, RIGHT, BEFORE THAT TIME.

18 SO I'M NOT STOPPING YOU FROM TAKING DISCOVERY ON MORE  
19 SPECIFIC TOPICS BEFORE 2015. BUT GENERALIZED MARKETING THAT  
20 DOESN'T DISCUSS ANY OF THE NAMED FEATURES OR ANYTHING LIKE  
21 THAT, OR THE TECHNICAL FEATURES THAT I LISTED, IT STARTS TO GET  
22 NON-PROPORTIONAL AT SOME POINT.

23 NOW, IF YOU CAN SHOW RELEVANCE BY SHOWING ANOTHER DOCUMENT  
24 FROM THAT TIME PERIOD OR SOMETHING REFERRING BACK, THAT'S FOR A  
25 LATER DATE.

1                   MR. BILSBORROW: SO JUST ONE POINT OF CLARIFICATION.  
2  
3                   IF WE HAVE SPECIFIC RFP'S AND WE ARE ABLE TO MAKE A  
4                   RELEVANCE SHOWING THAT WE WOULD LIKE SNAP TO SEARCH, PRIOR TO  
5                   2015, FOR THIS SPECIFIC RFP, MY UNDERSTANDING OF YOUR RULING IS  
6                   WE CAN APPROACH THEM AND SAY, FOR THIS SPECIFIC RFP, YOU SHOULD  
7                   SEARCH EARLIER THAN 2015, AND HERE'S WHY.

8                   IS THAT RIGHT?

9                   THE COURT: YEAH. WELL, I WOULD SAY AGAIN WHAT I'VE  
10                  SAID REPEATEDLY. YOU SHOULD BE TALKING TO EACH OTHER, AND  
11                  THERE'S STILL -- I AM DISAPPOINTED WHEN I HEAR THAT PEOPLE ARE  
12                  REFUSING TO TALK ABOUT ISSUES OR WHATEVER, BECAUSE YOU DO NEED  
13                  TO COMMUNICATE, EVEN IF YOU DISAGREE, BECAUSE YOU CAN TRY TO  
14                  PROPOSE, YOU KNOW, COMPROMISES AND WAYS TO NARROW THE BURDEN  
15                  AND WAYS TO ADDRESS THE CONCERNs THAT BOTH SIDES HAVE, RIGHT,  
16                  WITHOUT BRINGING IT TO ME.

17                  MR. RICE: A QUESTION -- WE DO TALK. WE HAVE BEEN  
18                  TALKING VERY FREQUENTLY, THE PARTIES HERE.

19                  THE COURT: GOOD.

20                  MR. RICE: I WILL SAY, WITH RESPECT TO  
21                  MR. BILSBORROW'S POINT ABOUT A SPECIFIC RFP, WE WILL OF COURSE  
22                  DISCUSS IT, BUT IF THE RFP CALLS FOR ALL MARKETING DOCUMENTS  
23                  RELATED TO SNAPCHAT, OR ALL MARKETING DOCUMENTS -- YOU KNOW,  
24                  THOSE, I THINK YOUR HONOR'S RULING WOULD APPLY HERE.

25                  THE COURT: WELL, AGAIN, THE BURDEN IS ON THEM TO  
                        SHOW YOU, BECAUSE IF IT'S PRE-2015, I THINK I WAS VERY CLEAR,

1           THEY'RE GOING TO NEED TO SHOW SOME SPECIFIC RELEVANCE WHY  
2           THERE'S SOME SUBSET OF DOCUMENTS SUBSUMED BY THAT RFP.

3           IT MAY BEHOOVE YOU TO SERVE ANOTHER RFP THAT TARGETS  
4           EXACTLY WHAT YOU WANT AS OPPOSED TO A GENERAL ONE THAT SAYS ALL  
5           DOCUMENTS GENERALLY ON MARKETING, FOR EXAMPLE.

6           MR. BILSBORROW: UNDERSTOOD.

7           THE COURT: BECAUSE YOU HAVE PLENTY OF TIME TO SERVE  
8           ANOTHER RFP. YOU'VE GOT TIME TO DO THAT. OKAY?

9           MR. BILSBORROW: JUST ONE MORE POINT OF CLARIFICATION  
10          ON THE CUSTODIANS.

11          THE COURT: YES.

12          MR. BILSBORROW: DID I UNDERSTAND YOUR HONOR'S RULING  
13          THAT THE CUSTODIAN SEARCHES SHOULD GO BACK TO --

14          THE COURT: WHATEVER THE TIMEFRAME IS FOR THAT  
15          FEATURE.

16          MR. BILSBORROW: WELL, THE CUSTODIANS, THOUGH, WILL  
17          HAVE DOCUMENTS THAT AREN'T NECESSARILY RELATED TO THE FEATURE;  
18          RIGHT? SO OUR PROPOSAL HAS BEEN TO START THE SEARCHES, START  
19          THE CUSTODIAL SEARCHES FROM THE BEGINNING OF THE CUSTODIAN'S  
20          EMPLOYMENT.

21          THE COURT: PRESUMABLY SOME OF YOUR ESI SEARCH TERMS  
22          CAPTURE THE FEATURES, THOUGH.

23          MR. BILSBORROW: SURE.

24          THE COURT: THAT SHOULD BE HOW IT'S DONE.

25          MR. BILSBORROW: BUT OUR UNDERSTANDING IS SNAP IS

1 PUTTING A DATE LIMIT ON THEIR SEARCHES FOR CUSTODIANS SO THAT  
2 THEY WOULD NOT CAPTURE DOCUMENTS PRIOR TO 2015.

3 THE COURT: I THOUGHT I WAS CLEAR. YOU SHOULDN'T BE  
4 ARTIFICIALLY LIMITING THE SEARCHES, RESULTS OF SEARCHES FROM  
5 CUSTODIANS BASED ON THEIR EMPLOYMENT DATE, AND YOU CERTAINLY  
6 SHOULDN'T BE LIMITING IT BASED ON JUST ARTIFICIALLY BY 2015,  
7 EITHER.

8 I MEAN, I'M TRYING TO BE GRANULAR HERE AND GIVE YOU  
9 GUIDANCE ON HOW TO -- YOU MAY HAVE TO TALK TO YOUR E-DISCOVERY  
10 VENDOR IN HOW TO WORK THIS OUT, BUT EITHER USING THE NAMED  
11 FEATURES OR ANALOGS FOR THEM IN THE ESI SEARCH TERMS.

12 NOW I HOPE I'VE GIVEN YOU GUIDANCE ON WHICH FEATURES GET  
13 DISCOVERY GOING BACK TO WHICH TIMEFRAME. OKAY?

14 MR. BILSBORROW: UNDERSTOOD. THANK YOU, YOUR HONOR.

15 MR. RICE: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 OKAY. NEXT IS YOUTUBE, I GUESS, DOCKET 825.

18 MS. TRUONG: AN TRUONG FOR PLAINTIFF, YOUR HONOR.

19 MS. MACHOCK: AND SAMANTHA MACHOCK FOR YOUTUBE.

20 THE COURT: OKAY. SO YOU'VE BOTH JUST HEARD ME WITH  
21 RESPECT TO SNAP.

22 SO HERE ARE THE FEATURES THAT I SAW DISCUSSED IN THE  
23 BRIEFING: TRACKING AND ANALYSIS OF YOUTH ACCOUNTS; AGE  
24 RESTRICTIONS AND TARGETING; GENERATING AND RECOMMENDING  
25 CONTENT; WATCH TIME; TRUSTED FLAGGER; CUSTOMIZABLE CHANNELS;

1 SUBSCRIPTION-FILLED GUIDE; MOBILE OFFLINE VIDEO VIEWING AND  
2 COMMENT FEATURES; AND YOUTUBE KIDS.

3 IT APPEARS THERE'S NO WRITTEN DISPUTE ON TIMEFRAME WITH  
4 REGARD TO YOUTUBE SHORTS OR SUPER STICKERS.

5 SO THEN I COUNT EITHER NINE OR TEN FEATURES THAT ARE AT  
6 ISSUE FOR THIS DISPUTE IN TERMS OF HISTORICAL DISCOVERY. IS  
7 THAT RIGHT?

8 MS. TRUONG: CAN I CLARIFY SOMETHING?

9 THE COURT: SURE.

10 MS. TRUONG: THE LIST WE SET FORTH IN PAGE 1 OF OUR  
11 BRIEFING IS INTENDED TO underscore THE REASONABLENESS OF OUR  
12 START DATE OF JANUARY OF 2011, WHICH WE THINK WAS A CATALYST  
13 POINT FOR WHEN YOUTUBE BEGAN RECALIBRATING AND REDESIGNING ITS  
14 RECOMMENDATION SYSTEM AND ITS FOCUS ON YOUTH AND CHILDREN ON  
15 ITS PLATFORM.

16 SO TO THE EXTENT THAT YOUTUBE SHORTS AND CREATOR OR, YOU  
17 KNOW, THE CHANGE TO THE LIVE BUTTON, WHICH HAPPENED IN 2009,  
18 WAS NOT IN THIS LIST, IT WAS ONLY BECAUSE OUR ARGUMENT HERE WAS  
19 2011 WAS THE RIGHT JUMPING POINT FOR THE TIMEFRAME.

20 IT WAS NOT MEANT TO BE AN EXCLUSIVE LIST IN TERMS OF ALL  
21 POTENTIAL TARGETED FEATURES AT ISSUE.

22 MS. MACHOCK: MAY I?

23 THE COURT: SURE.

24 MS. MACHOCK: AND THE OTHER POINT I WOULD MAKE IS  
25 THAT THE LIST THAT YOU JUST ARTICULATED IS NOT -- MANY OF THOSE

1 ARE NOT ACTUALLY CHALLENGED FEATURES. AS COUNSEL JUST  
2 ARTICULATED, THEY WERE JUST CHANGES POTENTIALLY TO THE YOUTUBE  
3 PLATFORM THAT MAY OR MAY NOT BE RELEVANT TO THIS CASE OR TO ANY  
4 CLAIM IN THIS CASE, AND THAT'S PART OF THE PROBLEM.

5 SO I DO AGREE THAT THEY'RE NOT A COMPREHENSIVE LIST OF  
6 FEATURES.

7 THE COURT: OKAY.

8 MS. MACHOCK: FOR EXAMPLE, TRUSTED FLAGGER PROGRAM,  
9 THAT'S NOT A CHALLENGED FEATURE IN THIS CASE AS FAR AS I KNOW.  
10 OR THE LAUNCH OF THE IPAD/IPHONE TOUCH APP. THERE'S NO CLAIM  
11 THAT RELATES TO THAT.

12 THE COURT: OKAY. I DON'T UNDERSTAND WHY YOU'RE  
13 BRIEFING OR INCLUDING THOSE IN THE LIST THEN.

14 MS. TRUONG: IF I CAN CLARIFY, YOUR HONOR?

15 OUR INTENT FOR THE DEFAULT RELEVANT TIME PERIOD WAS THAT  
16 IT WOULD BE THE DEFAULT IN TERMS OF HOW IT WOULD APPLY ACROSS  
17 THE BOARD TO RFP'S, AND THAT WHERE THE PARTIES DISAGREED OR  
18 WANTED TO HAVE A MORE TARGETED DISCUSSION, WE WOULD HAVE A  
19 TARGETED SUPPLEMENTATION.

20 THAT WAS OUR FRAMEWORK FOR THIS BRIEFING AND OUR FRAMEWORK  
21 FOR HAVING A RELEVANT TIME PERIOD.

22 THE COURT: BUT IS IT CORRECT THAT TRUSTED FLAGGER  
23 AND THE IPAD MOBILE OFFLINE AND COMMENT FEATURES, THAT'S NOT  
24 REALLY AT ISSUE IN THE CASE?

25 MS. TRUONG: I DISAGREE, YOUR HONOR.

1 TRUSTED FLAGGER GOES TO OUR CORE ALLEGATIONS ABOUT THE  
2 FAILURE TO IMPLEMENT APPROPRIATE SAFETY FEATURES ON THE YOUTUBE  
3 PLATFORM. TRUSTED FLAGGER, OUR UNDERSTANDING, IS ONE WAY THAT  
4 YOUTUBE SOUGHT TO ADDRESS THAT BY HAVING, QUOTE-UNQUOTE,  
5 TRUSTED PEOPLE THAT WOULD FLAG CONTENT.

6 LIKEWISE, YOUR HONOR, I THINK WITH RESPECT TO THE LAUNCH  
7 OF IPHONE AND IPAD TOUCH APPS, I THINK IT IS RELEVANT. WE ALL  
8 KNOW THAT THE VAST MAJORITY OF CHILDREN OUT THERE USE IPHONE  
9 AND IPAD APPS NOW TO ACCESS ALL MANNER OF PLATFORMS, INCLUDING  
10 YOUTUBE.

11 THE COURT: THEY ARE PART OF THE ALLEGATIONS OF THE  
12 CASE, APPARENTLY.

13 MS. MACHOCK: I WOULD ASK COUNSEL TO POINT TO  
14 ANYWHERE IN THE COMPLAINT WHERE THERE'S ANY ALLEGATION ABOUT  
15 THESE ISSUES.

16 I MEAN, WE -- TO ADDRESS SOME OF THE POINTS YOUR HONOR HAS  
17 MADE WITH RESPECT TO CO-DEFENDANTS, WE AGREE WITH YOU THAT A  
18 TARGETED APPROACH IS THE CORRECT APPROACH HERE.

19 AND THE -- THE REASON THAT YOUTUBE AND PLAINTIFFS ARE AT  
20 AN IMPASSE IS BECAUSE, AS COUNSEL JUST ARTICULATED, THE  
21 PROPOSAL HERE IS A DEFAULT DATE RANGE AND THERE HAS BEEN -- YOU  
22 KNOW, TO THE EXTENT THAT PLAINTIFFS CAN SHOW THAT A PRE-2015  
23 DISCOVERY IS RELEVANT AND PROPORTIONATE TO A SPECIFIC FEATURE  
24 OR ISSUE, YOUTUBE IS OPEN TO ENGAGING IN THAT DIALOGUE.

25 BUT PLAINTIFFS HAVE NOT BEEN WILLING TO ENGAGE IN THAT

1 DIALOGUE AND THEY HAVE RAISED THIS DISPUTE IN THE CONTEXT OF A  
2 DEFAULT DATE RANGE, AND THAT WOULD APPLY ACROSS THE BOARD TO  
3 EVERY SINGLE RFP AND HAVE NOT BEEN WILLING TO ENGAGE IN A  
4 TARGETED APPROACH.

5 THE COURT: OKAY. SO, I MEAN, I'VE ALREADY  
6 INSTRUCTED YOU TO IDENTIFY THE SPECIFIC RFP'S THAT ARE AT ISSUE  
7 IN THE PREVIOUS DISPUTE. THOSE WOULD ALSO BE IMPLICATED BY THE  
8 TIMEFRAME; RIGHT? SO PRESUMABLY, AS PART OF YOUR DISCUSSION  
9 ABOUT THE RFP'S -- THIS GOES FOR EVERYONE -- WHEN YOU IDENTIFY  
10 YOUR RFP'S THAT GO TO EACH DISPUTE, YOU'VE GOT TO TALK ABOUT  
11 THEM AND SPECIFICALLY IDENTIFY WHICH ONES ARE AT ISSUE.

12 WELL, SO IT SEEMS TO ME THAT ALL THESE PRE-2015 FEATURES,  
13 FROM WHAT I HEAR, THEY ARE AT ISSUE IN THE CASE. I MEAN,  
14 THE -- THEY'RE NOT -- I THINK -- THERE'S DISPUTE AS TO WHETHER  
15 THERE'S BEEN, I DON'T KNOW, SOME INTERROGATORY OR SOMETHING IN  
16 THE COMPLAINT OR PLEADING THAT'S IDENTIFIED SPECIFICALLY THE  
17 THEORY, BUT WE'RE HEARING A REPRESENTATION FROM COUNSEL THAT  
18 THEY'RE IN THE CASE NOW, SO MAYBE YOU NEED TO SERVE AN  
19 INTERROGATORY FOR THEIR CONTENTIONS OR TAKE SOME OTHER STEPS TO  
20 FLESH OUT WHAT EXACTLY THE THEORIES OF THE CASE ARE BEYOND THE  
21 PLEADINGS.

22 MS. MACHOCK: MAY I RESPOND TO THAT?

23 I GUESS, YOUR HONOR, TO THE EXTENT THAT SOMETHING NOT  
24 ALLEGED IN THE COMPLAINT THAT HAS NOT BEEN LINKED TO ANY  
25 SPECIFIC ALLEGATION BY ANY SPECIFIC PLAINTIFF IN THIS CASE IS

1 GOING TO PROVIDE THE BASIS FOR OPENING UP YEARS OF DISCOVERY, I  
2 THINK THERE NEEDS TO BE MORE THAN JUST -- YOU KNOW, WE'RE  
3 HEARING ABOUT, YOU KNOW, A THEORY ABOUT IPADS FOR THE FIRST  
4 TIME IN A LETTER BRIEF THAT HAS NOT BEEN LINKED TO ANY  
5 ALLEGATION IN THE COMPLAINT, THAT HAS NOT BEEN LINKED TO ANY  
6 PLAINTIFF, ANY SPECIFIC CLAIM AGAINST YOUTUBE IN THIS CASE.

7 AND, I MEAN, JUST TO POINT OUT, YOUR HONOR, THAT THE ONLY  
8 BELLWETHER CASE AGAINST YOUTUBE IN THIS CASE INVOLVES A  
9 PLAINTIFF WHO STARTED USING YOUTUBE IN 2018. THAT PLAINTIFF'S  
10 EXPERIENCE -- THESE CHANGES THAT COUNSEL'S POINTING YOUR HONOR  
11 TO HAVE ABSOLUTELY NOTHING TO DO WITH THE CLAIMS THAT ARE  
12 ACTUALLY BEING ASSERTED AGAINST YOUTUBE IN THIS CASE.

13 THE COURT: SO HELP ME OUT SINCE YOU KNOW THE  
14 COMPLAINT BETTER THAN I DO. OF THE 12 OR SO FEATURES THAT I'VE  
15 READ INTO THE RECORD, IN ADDITION OR OTHER THAN TRUSTED FLAGGER  
16 AND THE IPHONE TOUCH APP, ARE THERE ANY OTHERS THAT ARE NOT --  
17 THAT YOU -- THAT UNTIL TODAY YOU DIDN'T KNOW WERE PART OF THE  
18 CASE?

19 MS. MACHOCK: WOULD YOUR HONOR MIND REPEATING THEM?

20 THE COURT: YEAH, SURE. SO WHEN I WENT THROUGH THE  
21 LETTER BRIEFS, THIS IS WHAT I SAW: TRACKING, COLLECTION, AND  
22 ANALYSIS OF YOUTH ACCOUNTS; AGE RESTRICTIONS AND TARGETING;  
23 GENERATING AND RECOMMENDING CONTENT; WATCH TIME; TRUSTED  
24 FLAGGER; CUSTOMIZABLE CHANNELS; SUBSCRIPTION-FILLED GUIDE;  
25 IPHONE TOUCH APPS; MOBILE OFFLINE VIDEO VIEWING AND COMMENT

1 FEATURES; AND YOUTUBE KIDS.

2 AND AGAIN, I MENTIONED IT LOOKED LIKE YOUTUBE SHORTS AND  
3 THE SUPER STICKERS, THERE ARE NO DISPUTES BECAUSE THEY WERE  
4 MORE RECENT.

5 MS. MACHOCK: YES, BUT SEVERAL OF THOSE, AGAIN, I  
6 HAVE NO IDEA HOW THEY RELATE TO THE CLAIMS.

7 THE COURT: WHICH ONES?

8 MS. MACHOCK: THE MOBILE --

9 THE COURT: VIDEO OFFLINE?

10 MS. MACHOCK: -- VIDEO OFFLINE, A SUBSCRIPTION TO  
11 CHANNELS, THAT DOESN'T RELATE TO ANY SORT OF CLAIM THAT I'VE  
12 HEARD ARTICULATED.

13 AND CUSTOMIZABLE -- I'M SORRY, I DIDN'T CATCH --

14 THE COURT: CHANNELS.

15 MS. MACHOCK: CUSTOMIZABLE CHANNELS, THE SUBSCRIPTION  
16 TO CHANNELS, AND THEN THE ONE RIGHT BEFORE THAT ABOUT  
17 CUSTOMIZING --

18 THE COURT: TRUSTED FLAGGER, WATCH TIME, CUSTOMIZABLE  
19 CHANNELS.

20 MS. MACHOCK: YEAH, THAT MUST BE IT.

21 THE COURT: OKAY. FIRST TIME YOU'RE HEARING ABOUT  
22 IT. ANY OTHERS?

23 MS. MACHOCK: I THINK THAT'S RIGHT. THE WATCH TIME  
24 IS NEW, TOO, BUT I THINK I UNDERSTAND THEIR THEORY THERE.

25 THE COURT: OKAY. AND IS IT CORRECT, YOUTUBE KIDS

1 WAS LAUNCHED IN 2015?

2 MS. MACHOCK: THAT IS CORRECT, YES.

3 THE COURT: ALL RIGHT. SO --

4 MS. TRUONG: MAY I RESPOND, YOUR HONOR?

5 THE COURT: SURE.

6 MS. TRUONG: WATCH TIME IS CLEARLY ALLEGED IN THE

7 COMPLAINT. THERE ARE SPECIFIC PARAGRAPHS IN THERE ABOUT THAT.

8 I CAN GET THAT CITATION FOR THE COURT. I BELIEVE IT STARTS AT  
9 PARAGRAPH 741 AND GOES FORWARD.

10 WITH RESPECT TO OFFLINE MOBILE VIEWING, THAT GOES TO OUR  
11 ALLEGATIONS ABOUT YOUTUBE'S INTENT TO ENGAGE CHILDREN NOT ONLY  
12 IN ONLINE ADDICTION, BUT ALSO OFFLINE ENGAGEMENT.

13 WITH RESPECT TO CUSTOMIZABLE CHANNELS, THAT AGAIN GOES TO  
14 THE FEATURES, I BELIEVE THEY'RE CALLED INTERMITTENT VIEW  
15 FEATURES THAT WE'VE ALLEGED IN THE REPORT WHICH ALL GOES TO  
16 ENGAGING YOUNG USERS WITH POSITIVE REINFORCEMENT BY HAVING  
17 PEOPLE SUBSCRIBE TO THEIR VIDEOS OR LIKE THEIR VIDEOS OR ENGAGE  
18 IN ALL OF THESE FEATURES WHERE THEY CAN INTERACT AND GET THE  
19 DOPAMINE RESPONSE FROM THEM.

20 I BELIEVE I HIT ALL OF THE ONES THAT COUNSEL LISTED.

21 THE COURT: WHEN YOU SAY "RECORD," YOU MEAN THE  
22 COMPLAINT?

23 MS. TRUONG: THE COMPLAINT, YES, YOUR HONOR. I  
24 APOLOGIZE IF I MISSPOKE.

25 THE COURT: I WANT TO MAKE SURE I'M CLEAR ON THIS.

1 SO ARE THERE ALLEGATIONS IN THE COMPLAINT, OR THAT YOU'VE MADE  
2 OTHERWISE IN THIS CASE, IDENTIFYING TRUSTED FLAGGER AS PART OF  
3 YOUR THEORY?

4 MS. TRUONG: I DON'T BELIEVE TRUSTED FLAGGER WAS  
5 SPECIFICALLY ALLEGED.

6 BUT WE ABSOLUTELY ALLEGED DEFICIENCIES IN YOUTUBE'S CSAM  
7 RESPONSE AND ITS TOOLS, WHICH IS THE CHILD SEXUAL ABUSE IMAGERY  
8 DETECTION PROGRAM, AND TRUSTED FLAGGER FELL WITHIN THAT.

9 MS. MACHOCK: MAY I RESPOND TO THE CSAM POINT?

10 THE COURT: SURE.

11 MS. MACHOCK: AGAIN, THERE'S NOT A SINGLE PLAINTIFF  
12 IN THE ENTIRE 47 NAMED PLAINTIFFS THAT'S ALLEGING ANY CLAIM  
13 RELATED TO CSAM AGAINST YOUTUBE, WHETHER IT BE REPORTING,  
14 WHETHER IT BE A VICTIM OF CSAM. THERE IS NO ALLEGATION RELATED  
15 TO CSAM AND ITS USE, AND THAT IS PART OF THE PROBLEM HERE.  
16 THERE'S SWEEPING DISCOVERY ON ISSUES THAT ARE NOT ACTUALLY  
17 TETHERED TO THE CLAIMS IN THIS CASE, AND THAT CERTAINLY  
18 SHOULDN'T BE A BASIS FOR MOVING -- FOR ACCEPTING A DEFAULT  
19 DATE, AS PLAINTIFFS ARE ADVOCATING FOR, THAT IS MORE THAN EIGHT  
20 YEARS PRIOR TO THE FILING OF THE COMPLAINT.

21 THE COURT: OKAY. SO BASED ON WHAT I'M HEARING TODAY  
22 AND THE RECORD THAT WAS PROVIDED TO ME, I DO THINK DISCOVERY ON  
23 WATCH TIME GOING BACK TO 2011 IS JUSTIFIED ON THIS RECORD, AND  
24 THE -- YOU DON'T GIVE IT A NAME, BUT THE FEATURE OF GENERATING  
25 AND RECOMMENDING CONTENT AS WELL.

1 MS. TRUONG: THE RECOMMENDATION SYSTEM, YOUR HONOR,  
2 WAS STARTED IN 2008.

3 THE COURT: OKAY.

4 MS. TRUONG: AND THAT'S ALLEGED IN OUR COMPLAINT.

5 THE COURT: ALL RIGHT. SO FOR THAT, IT'LL GO BACK TO  
6 JANUARY 1, 2011. I DON'T THINK YOU NEED TO GO BACK TO 2008 ON  
7 THAT, ESPECIALLY SINCE YOU PROPOSED 2011.

8 THE -- OKAY. SO THERE'S NO INFORMATION GIVEN TO ME ON  
9 WHEN THE TRACKING, COLLECTION, AND ANALYSIS OF YOUTH ACCOUNTS  
10 STARTED.

11 MS. MACHOCK: AGAIN --

12 THE COURT: I'M NOT SURE WHAT THAT IS.

13 MS. MACHOCK: I DON'T KNOW WHAT THAT IS, EITHER, TO  
14 BE HONEST.

15 THE COURT: WHAT IS IT, AND WHEN DID IT START?

16 MS. TRUONG: WE DON'T KNOW EITHER, YOUR HONOR, BUT I  
17 THINK WE PINGED THAT OFF OF WHEN YOUTUBE WAS TAKEN OVER BY  
18 GOOGLE, WHICH I BELIEVE WAS IN ABOUT 2006, AGE VERIFICATION  
19 BECAME PART OF THE ACCOUNT PROCESS.

20 THE COURT: WELL, THAT'S NOT -- OKAY. WHAT ABOUT AGE  
21 RESTRICTIONS AND TARGETING? IS THAT -- IS THERE A FEATURE  
22 YOU'RE DISCUSSING, THAT YOU HAVE IN MIND? OR YOU WROTE THAT  
23 OUT?

24 MS. TRUONG: THERE IS AN RFP REQUESTING DOCUMENTS AS  
25 TO AGE RESTRICTION S AND FEATURES. OUR PROPOSAL WAS THAT THAT

1 START IN 2011 BECAUSE WE DON'T HAVE INFORMATION ABOUT WHEN IT  
2 SPECIFICALLY BEGAN.

3 THE COURT: OKAY. I'LL DO IT THE EASY WAY.

4 SO I DID WATCH TIME. YOUTUBE KIDS, SINCE IT WAS LAUNCHED  
5 IN 2015, I'M GOING TO GIVE YOU SIX MONTHS PRIOR TO THAT SO IT  
6 PICKS UP AT LEAST SOME OF THE DEVELOPMENT PERIOD, SO JANUARY 1,  
7 2014.

8 AND THEN THE RECOMMENDATION SYSTEM, I SAID YOU GET BACK TO  
9 JANUARY 1, 2011, BECAUSE THAT WAS THE ORIGINAL PROPOSED START  
10 DATE.

11 MS. MACHOCK: MAY I RESPOND ON THAT POINT?

12 THE COURT: SURE.

13 MS. MACHOCK: AND MY COLLEAGUE DID MAKE THIS POINT AS  
14 WELL, BUT I THINK THIS CASE IS FUNDAMENTALLY DIFFERENT, EVEN  
15 FOR A FEATURE LIKE PERSONALIZATION THAT DIDN'T EXIST PRE-2015,  
16 THIS IS FUNDAMENTALLY DIFFERENT THAN A TYPICAL PRODUCTS  
17 LIABILITY CASE WHERE YOU HAVE A PRODUCT THAT'S ACTUALLY  
18 MANUFACTURED AND THEN PUT IN THE STREAM OF COMMERCE AND NOT  
19 MODIFIED, LIKE AN AIRPLANE OR LAWN MOWER TO USE THE EXAMPLES IN  
20 SOME CASES.

21 HERE WE HAVE A CONSTANTLY EVOLVING FEATURE THAT'S OFFERED  
22 AS PART OF THE SERVICE AND THAT'S CUSTOMIZED TO THE INDIVIDUAL  
23 USER.

24 AND IF YOU LOOK AT THE STATUTE OF LIMITATIONS IN THIS  
25 CASE, THEY RUN -- THEY VARY, AND THEY VARY BY STATE AND BY

1 CLAIM, BUT IT'S TWO TO FOUR YEARS.

2 SO OUR DATE OF 2015 IS ALREADY FOUR TO SIX YEARS PRIOR TO  
3 SORT OF THE EARLIEST STATUTE OF LIMITATION THAT COULD APPLY IN  
4 THIS CASE, AND SO WE THINK THAT THAT PERIOD COVERS ANY SORT OF  
5 PRELAUNCH RESEARCH AND DEVELOPMENT, TESTING THAT WOULD HAVE  
6 GONE INTO THE EXPERIENCE THAT ANY PLAINTIFF IN THIS CASE HAD  
7 DURING THE RELEVANT TIME PERIOD TO THE CLAIMS IN THIS CASE.

8 SO -- AND I THINK THAT DOES -- AND EVEN PLAINTIFFS' OWN  
9 CASE, FASSETT V. SEARS HOLDINGS CORP., RECOGNIZED THAT WHEN YOU  
10 ARE DEALING WITH A COMPONENT OR DESIGN THAT MATERIALLY CHANGES  
11 OVER THE RELEVANT TIMEFRAME, THEN A NARROWER PERIOD IS  
12 JUSTIFIED.

13 AND IT'S --

14 THE COURT: BUT WE'VE ALREADY HAD ARGUMENT, I'VE  
15 HEARD -- I THINK I'VE BEEN CONVINCED THAT AS TO THE  
16 AVAILABILITY OF ALTERNATIVE FEATURES, RIGHT, THE FEASIBILITY OF  
17 ALTERNATIVE FEATURES AND THE KNOWLEDGE ISSUE, THAT -- THE  
18 PRECEDING CHANGES, PLAINTIFFS MADE THE PROFFER THAT THOSE ARE  
19 RELEVANT TO THEIR CLAIM, NOT JUST SIMPLY HOW THE PRODUCT OR  
20 SERVICE WORKS TODAY, OR EVEN DURING THE STATUTE OF LIMITATIONS  
21 PERIOD.

22 SO I HEAR YOUR ARGUMENT. I'M NOT CONVINCED THAT IT'S  
23 ENOUGH TO BLOCK --

24 MS. MACHOCK: I HEAR YOU.

25 MY ONLY POINT IS THAT BY GOING BACK TO 2015, WE ARE

1 CAPTURING THAT EARLIER PERIOD BECAUSE THE STATUTE OF  
2 LIMITATIONS IS ONLY TWO TO FOUR YEARS. SO 2015 IS ALREADY FOUR  
3 TO SIX YEARS BEFORE --

4 THE COURT: YOU'RE GETTING TO WHAT I WAS GETTING TO  
5 NEXT.

6 MS. MACHOCK: OKAY.

7 THE COURT: ON EVERY OTHER FEATURE THAT I LISTED FOR  
8 WHICH EITHER THERE HASN'T BEEN, FROM WHAT WE CAN TELL, AT LEAST  
9 BASED ON REPRESENTATIONS, CLEAR NOTICE THAT THEY'RE AT ISSUE IN  
10 THE CASE, RIGHT, I'M ONLY GOING TO ALLOW DISCOVERY BACK TO 2015  
11 BECAUSE THEY'RE NOT -- AT LEAST -- I'LL TAKE COUNSEL'S  
12 REPRESENTATION THAT IF THEY'RE NOT IN THE COMPLAINT, THEY'VE  
13 NOT SUFFICIENTLY BEEN PROVIDED NOTICE THAT THEY'RE PART OF YOUR  
14 THEORY OF LIABILITY, RIGHT, THEN YOU HAVEN'T GIVEN ME A BASIS  
15 TO FIND EXTENSIVE DISCOVERY PRIOR TO 2015, WHICH DEFENDANTS ARE  
16 AGREEING TO FOR THOSE.

17 BUT IT WOULD BEHOOVE THE DEFENSE, I MEAN, I KNOW  
18 CONTENTION INTERROGATORIES CAN BE PROBLEMATIC, BUT YOU MAY WANT  
19 TO START ASKING CONTENTION INTERROGATORIES OF EACH SIDE -- IT  
20 GOES BOTH WAYS -- SO THAT I DON'T HEAR ARGUMENTS, I DON'T KNOW  
21 WHAT THEIR THEORIES ARE. PART OF DISCOVERY IS TO FIND OUT WHAT  
22 THE THEORIES ARE.

23 MS. MACHOCK: AND I THINK WE HAVE OFFENSIVE DISCOVERY  
24 TO THE BELLWETHER PLAINTIFFS, AND WE'RE IN THE BELLWETHER  
25 SELECTION PROCESS RIGHT NOW, WHICH IS WHY WE CAN'T --

1                   THE COURT: THIS GOES BEYOND WHO THE BELLWETHERS ARE.  
2                   THEY HAVE THEORIES OF LIABILITY THAT GO TO ALL THE PLAINTIFFS.  
3                   THERE'S NOTHING STOPPING YOU FROM ASKING THEM, WHAT ARE  
4                   THE EXACT FEATURES OF OUR PRODUCTS THAT YOU ARE ACCUSING OF  
5                   INFRINGEMENT, AND WHY?

6                   I DON'T WANT TO TELL YOU HOW TO DO YOUR JOB, BUT THERE ARE  
7                   WAYS, AGAIN, TO GET THE INFORMATION THAT YOU SAY YOU DON'T  
8                   HAVE. AND IT'S NOT REALLY CONVINCING ME AT THE END OF THE DAY  
9                   TO THROW UP YOUR HANDS AND SAY, WE DON'T KNOW BECAUSE THEY  
10                  WON'T TELL US. THERE ARE WAYS TO GET THEM TO TELL YOU. THAT'S  
11                  MY POINT.

12                  MS. MACHOCK: I HEAR YOU, YOUR HONOR.

13                  THE COURT: YOU'VE GOT A CUTOFF DATE OF 2015 FOR ALL  
14                  BUT ONE, TWO, THREE, OR FOUR FEATURES. AND I THINK THAT  
15                  ADDRESSES YOUR CONCERN AS WELL ABOUT BOTH PROPORTIONALITY AND  
16                  RELEVANCE FOR THOSE.

17                  BUT, AGAIN, PLAINTIFF HAS PUT YOU ON NOTICE AND/OR THEY'VE  
18                  SHOWN, BASED ON THE BRIEFING, TO BE -- THERE'S A BASIS THAT  
19                  GOES BACK TO EARLIER DATES FOR THOSE.

20                  BUT, AGAIN, YOU REALLY DO NEED TO IDENTIFY WHICH DOCUMENT  
21                  REQUESTS SPECIFICALLY GO TO THESE, AND THEN PLEASE TALK TO EACH  
22                  OTHER ON THE LOGISTICS OF WORKING THIS OUT AND ALL THAT. I  
23                  DON'T WANT TO HAVE TO HEAR YOU COME BACK AND SAY, WE CAN'T  
24                  FIGURE OUT HOW TO ACTUALLY IMPLEMENT THIS, BECAUSE IT'S JUST A  
25                  MATTER NOW OF GETTING INTO THE TRENCHES AND FIGURING OUT HOW TO

1 GET THESE DOCUMENTS. OKAY?

2 MS. MACHOCK: ON THAT POINT, YOUR HONOR, MAY I  
3 CLARIFY THE SCOPE OF YOUR RULING ON PERSONALIZATION, WATCH  
4 TIME, I BELIEVE, WHICH WAS THE ONE YOU SAID MAY GO BACK TO  
5 2011?

6 THE COURT: WATCH TIME --

7 MS. MACHOCK: WHAT -- CAN I JUST -- WHAT DO YOU MEAN  
8 IN TERMS OF -- DO YOU MEAN WATCH TIME IN THE SENSE OF YOUTUBE  
9 USED IT FOR PURPOSES OF PERSONALIZATION? DO YOU MEAN WATCH  
10 TIME IN THE SENSE THAT YOUTUBE LOOKED AT IT? I GUESS, WHAT'S  
11 THE SCOPE?

12 THE COURT: THEY'RE THE ONES WHO'VE ASKED THE  
13 DOCUMENT REQUEST, BUT WHAT I'VE HEARD REPRESENTED IS THEY WANT  
14 DOCUMENT REQUESTS ON THE DESIGN AND IMPLEMENTATION OF FEATURES,  
15 AND PRESUMABLY MARKETING THAT GOES DIRECTLY TO THOSE FEATURES.

16 MS. TRUONG: YES, YOUR HONOR, INCLUDING ANY STRATEGY  
17 DISCUSSIONS AS TO WHY IT WAS INVESTIGATED, WHAT BENEFIT OR RISK  
18 CAME WITH THAT INVESTIGATION AND THE IMPLEMENTATION OF WATCH  
19 TIME.

20 I DON'T THINK THAT THAT'S CONTROVERSIAL AT ALL THAT WE'RE  
21 ASKING FOR THAT.

22 THE COURT: YOU CAN CERTAINLY TALK TO EACH OTHER MORE  
23 ABOUT THAT SPECIFICALLY.

24 BUT I ENCOURAGE PLAINTIFFS, JUST BECAUSE THE DOCUMENT  
25 REQUEST SAYS, WE WANT ALL DOCUMENTS ON X, Y, OR Z, YOU DO NEED

1 TO TALK TO THEM TO PUT SOME, YOU KNOW, DEFINITIONS AND MEAT ON  
2 THE BONES AS TO WHAT EXACTLY YOU'RE GOING FOR, LIKE YOU JUST  
3 DID. OKAY?

4 MS. MACHOCK: OKAY.

5 THE COURT: I ENCOURAGE YOU TO TALK.

6 OKAY. SO ANY OTHER CLARIFICATIONS OR ARGUMENTS ON THIS  
7 ONE?

8 MS. TRUONG: JUST ONE CLARIFICATION, YOUR HONOR.

9 AS WITH THE COURT'S RULING WITH RESPECT TO TIKTOK AND  
10 SNAP, THIS IS, OF COURSE, OPEN TO PLAINTIFFS PROPOUNDING ANY  
11 ADDITIONAL RFP'S AND DISCUSSING WITH YOUTUBE ANY ADDITIONAL  
12 FEATURES THAT WE MIGHT COME ACROSS. THAT'S MY UNDERSTANDING.  
13 IS THAT CORRECT?

14 THE COURT: I'M CERTAINLY NOT -- THEY HAVEN'T ASKED  
15 FOR A PROTECTIVE ORDER, AND I'M NOT FORECLOSING FURTHER  
16 DISCOVERY.

17 BUT, AGAIN, WITH THE GUIDANCE I'M GIVING YOU TODAY, I'M  
18 HOPING YOU ALL WILL BE MUCH MORE TARGETED IN TERMS OF HOW THE  
19 DOCUMENT REQUESTS ARE DRAFTED, WHAT SPECIFICALLY YOU'RE GOING  
20 AFTER, WHAT FEATURES YOU'RE GOING AFTER AND WHY, AND PRESUMABLY  
21 THE DEFENSE CAN WORK WITH YOU ON DOING A REASONABLE SEARCH IF  
22 IT'S APPROPRIATE. OKAY?

23 MS. MACHOCK: ACTUALLY, I THINK THERE IS ONE MORE  
24 ISSUE, AND THAT IS -- AND I THINK SOME OF MY COLLEAGUES MAY  
25 HAVE THIS ISSUE AS WELL -- BUT THE END DATE.

1 THE COURT: OKAY.

2 MS. MACHOCK: WE HAVEN'T ADDRESSED THAT.

3 THE COURT: OKAY. SO I FORGET, IS THIS THE MOTION  
4 WHERE THE END DATE WAS PROPOSED TO BE APRIL 1, 2024?

5 MS. TRUONG: THAT'S CORRECT, YOUR HONOR. IT'S THE  
6 SAME END DATE THAT YOUTUBE HAS PROPOSED ON PLAINTIFFS.

7 THE COURT: OKAY. SO THAT'S YOUR END DATE, APRIL 1,  
8 2024. THERE'S STILL PLENTY OF TIME. THERE'S NO, QUOTE -- I  
9 MEAN, THERE'S A DUTY TO SUPPLEMENT IF YOU ACTUALLY RUN ACROSS  
10 DOCUMENTS FROM THE DEFENSE SIDE, BUT THERE'S NO -- YOU'VE GOT  
11 TIME TO SERVE FOLLOW-UP DOCUMENT REQUESTS IF THERE'S SOMETHING  
12 THAT IS SPECIFIC THAT YOU NEED THAT YOU SEE IN THE PRODUCTION.  
13 OKAY?

14 SO I DON'T WANT TO -- I'M NOT OPENING THIS UP TO, LIKE,  
15 UNENDING DISPUTES OVER WHETHER THERE'S A NEED TO SUPPLEMENT  
16 FURTHER OR NOT. APRIL 1 IS THE DATE, AND IF THERE'S REALLY  
17 SOMETHING SPECIFIC YOU WANT, SERVE FOLLOW-UP DOCUMENT REQUESTS.  
18 OKAY?

19 MS. TRUONG: UNDERSTOOD.

20 THE COURT: OKAY. SAME -- AND THEN THE SAME RULING  
21 GOES ON START DATE FOR THE CUSTODIAL SEARCHES LIKE I DID IN THE  
22 OTHER MOTION, THAT IS, NO ARTIFICIALLY CUTTING IT OFF BASED ON  
23 EMPLOYMENT DATE OR THE STATUTE OF LIMITATIONS, OKAY?

24 I DID -- I WILL NOTE -- I KNOW WE DIDN'T PUT IT ON THE  
25 CALENDAR TODAY, BUT THE DISCOVERY LETTER BRIEF, DOCKET

1 NUMBER 848, WHICH IS WHETHER YOUTUBE SHOULD DESIGNATE  
2 ADDITIONAL DOCUMENT CUSTODIANS, FOOTNOTE 7 OF THAT LETTER BRIEF  
3 ESSENTIALLY ASKS -- SAYS THAT THIS ISSUE TODAY ON TIME PERIOD  
4 GETS RESOLVED -- IT IS AN ISSUE IN THAT FOOTNOTE.

5 SO FOR PURPOSES OF DOCKET 848, MY RULING HERE APPLIES TO  
6 THAT LETTER BRIEF. OKAY?

7 MS. MACHOCK: SO JUST TO CLARIFY, DOES THAT MEAN THAT  
8 IF A CUSTODIAN DOES NOT HAVE DOCUMENTS OR IS NOT RELATED TO THE  
9 ISSUES, WATCH TIME, PERSONALIZATION, THEN THE 2015 TIMEFRAME  
10 WOULD APPLY TO THAT CUSTODIAN?

11 THE COURT: RIGHT.

12 MS. MACHOCK: OKAY.

13 MS. TRUONG: YOUR HONOR, CAN I CLARIFY? I'M SORRY,  
14 CAN I ASK FOR CLARIFICATION ON THAT?

15 MY UNDERSTANDING WAS THAT THE COURT HAD SAID THERE WOULD  
16 BE SEARCH TERMS INVOLVED THAT WOULD APPLY TO THE CUSTODIAN  
17 SOURCES AND THAT, ONE, THERE WOULD BE NO ARTIFICIAL TIMELINES  
18 IMPOSED BY DEFENDANTS ON THAT; AND, TWO, THE SEARCH TERMS WOULD  
19 APPLY TO THAT.

20 THE COURT: WELL, THE TIMEFRAME FOR HISTORICALLY  
21 WHEN, HOW FAR BACK, AGAIN, FOR THAT CUSTODIAN, IT GOES BACK TO  
22 THE WATCH TIME TO 2011.

23 FOR THE CUSTODIANS FOR YOUTUBE KIDS, IT GOES BACK TO  
24 JANUARY 1 -- JUNE 1, 2014, ET CETERA.

25 AND FOR THE OTHERS FOR WHICH I DIDN'T FIND A BASIS, RIGHT,

1 IT ONLY GOES BACK FOR THOSE CUSTODIANS TO JANUARY 1, 2015.

2 MS. TRUONG: UNDERSTOOD, YOUR HONOR.

3 THE COURT: OKAY. THERE'S A PUZZLED LOOK, OR NO?

4 MS. MACHOCK: NO. JUST ONE OF THE CUSTODIANS LEFT  
5 THE COMPANY IN 2010, SO I THINK MAYBE THAT'S WHAT YOU'RE  
6 REFERRING TO. SO FOR THAT PERSON, IT WOULD BE BEFORE ANY OF  
7 THESE TIMEFRAMES.

8 THE COURT: IF THEY HAVE NO DOCUMENTS AND HAVE LEFT  
9 THE COMPANY BEFORE ANY OF THESE TIMEFRAMES, THEY HAVE NO  
10 DOCUMENTS.

11 NOW, AGAIN, IF PLAINTIFFS FIND SOMETHING FROM SOMEBODY  
12 ELSE'S PRODUCTION THAT REFERS TO THAT FORMER EMPLOYEE, THERE  
13 COULD BE FOLLOW-UP DISCOVERY. I'M NOT FORECLOSING THAT.

14 MS. MACHOCK: I HEAR YOU. THANK YOU.

15 THE COURT: ANY OTHER QUESTIONS, CLARIFICATION ON  
16 THIS?

17 MS. TRUONG: NONE FROM PLAINTIFFS YOUR HONOR. THANK  
18 YOU.

19 MS. MACHOCK: THANK YOU, YOUR HONOR.

20 THE COURT: OKAY.

21 MR. DRAKE: MIGHT I RAISE ONE QUESTION ABOUT  
22 SOMETHING THAT CAME UP IN THAT DISCUSSION?

23 GEOFFREY DRAKE, KING & SPALDING, FOR THE TIKTOK  
24 DEFENDANTS.

25 YOUR HONOR MENTIONED AN EXCELLENT POINT, I THOUGHT, WHICH

1 RELATED TO THE ABILITY TO SERVE CONTENTION INTERROGATORIES, AND  
2 IN MY EXPERIENCE THOSE CAN BE INCREDIBLY VALUABLE DURING  
3 DISCOVERY.

4 OBVIOUSLY THE PARTIES ARE LIMITED TO TEN INTERROGATORIES  
5 PER MINOR PLAINTIFF, WHICH NEED TO BE USED FOR CASE-SPECIFIC  
6 ISSUES AND FOR SCHOOL DISTRICT PLAINTIFFS.

7 SO TO EFFECTUATE YOUR HONOR'S ORDER, I WANTED TO MAKE SURE  
8 WE HAVE THE OPPORTUNITY TO SERVE A REASONABLE NUMBER OF  
9 CONTENTION INTERROGATORIES THAT APPLY ACROSS THE BOARD TO  
10 PLAINTIFFS SO THAT WE CAN FERRET OUT SOME OF THE ISSUES THAT  
11 YOUR HONOR IDENTIFIED TODAY.

12 MS. HAZAM: YOUR HONOR, THIS IS A BRAND NEW ISSUE  
13 ABOUT WHICH WE HAVE NOT HAD AN OPPORTUNITY TO MEET AND CONFER.  
14 IF WE COULD DO THAT? BECAUSE WE MAY WANT TO DISCUSS THE TIMING  
15 OF THIS AND WHICH DIRECTION IT GOES, ET CETERA, AND LIMITS ON  
16 THEM. SO WE'D LIKE THE OPPORTUNITY TO DO THAT.

17 THE COURT: YEAH. IT'S HYPOTHETICAL YET, SO WORK IT  
18 OUT AMONGST YOURSELVES.

19 OBVIOUSLY CONTENTION INTERROGATORIES CAN GO BOTH WAYS, SO  
20 IT BEHOOVES YOU TO HAVE AGREEMENT ON THIS. I UNDERSTAND  
21 BATTLES OVER CONTENTION INTERROGATORIES CAN TAKE AWHILE.

22 MR. DRAKE: WELL, WE HAVEN'T ANSWERED YET, YOUR  
23 HONOR, SO WE DON'T HAVE AFFIRMATIVE DEFENSES ON WHICH TO SERVE  
24 CONTENTION INTERROGATORIES.

25 THANK YOU FOR RAISING THE ISSUE.

1                   THE COURT: AT SOME POINT YOU WILL HAVE CONTENTIONS  
2                   IN YOUR CASE, SO --

3                   MS. HAZAM: THANK YOU, YOUR HONOR.

4                   THE COURT: SO QUESTIONS?

5                   MR. MURA: ANDRE MURA, YOUR HONOR.

6                   WITH RESPECT TO TIKTOK, THE COURT DID NOT ADDRESS THE  
7                   CUTOFF DATE THAT WE HAD RAISED IN OUR MOTION. WE HAD ASKED FOR  
8                   THE SAME CUTOFF DATE THAT THE COURT JUST ORDERED FOR YOUTUBE,  
9                   SO I ASSUME IT'S THE SAME.

10                  THE COURT: YOU MEAN APRIL 1, 2024?

11                  MR. MURA: YES.

12                  THE COURT: THANK YOU FOR RAISING THAT.

13                  SO, AGAIN, APRIL 1, 2024. YOU CAN SERVE FOLLOW-UP  
14                  DISCOVERY.

15                  OBVIOUSLY IF THERE'S SOMETHING SPECIFIC IN THE PRODUCTION  
16                  THAT COMES UP THAT DEFENDANTS HAVE ETHICAL OBLIGATIONS UNDER  
17                  THE RULES THAT REQUIRES SUPPLEMENTATION WITHOUT PROMPTING FROM  
18                  THE OTHER SIDE, I ASSUME ABLE COUNSEL WILL DO THAT.

19                  BUT THERE'S STILL PLENTY OF TIME TO DO FOLLOW-UP DISCOVERY  
20                  IF YOU SEE SOMETHING. FOR THE CURRENT SET OF DOCUMENT  
21                  REQUESTS, APRIL 1, 2024 IS THE CUTOFF.

22                  MR. MURA: THANK YOU, YOUR HONOR.

23                  THE COURT: OKAY. ALL RIGHT.

24                  WE'RE FINISHING THE LONG MARCH WITHOUT A BREAK.  
25                  WHO'S GOING TO ARGUE THE META 30 (B) (6)?

1 MS. WALSH: GOOD AFTERNOON, YOUR HONOR.

2 ALEXANDRA WALSH FOR PLAINTIFFS.

3 THE COURT: GOOD AFTERNOON.

4 MR. CHAPUT: GOOD AFTERNOON, YOUR HONOR.

5 ISAAC CHAPUT, COVINGTON & BURLING, FOR THE META  
6 DEFENDANTS.

7 THE COURT: FIRST QUESTION AFTER READING THE  
8 BRIEFING, DID THE PARTIES AGREE OR NOT ON TOPICS 1, 2, 8, AND  
9 36? IS IT 36?

10 MS. WALSH: YOUR HONOR, WE -- MR. CHAPUT AND I  
11 DISCUSSED THAT BY EMAIL THIS MORNING AND I BELIEVE WE'RE  
12 SETTLED ON THOSE POINTS.

13 MR. CHAPUT: THAT'S CORRECT.

14 I WILL JUST THROW 9 IN THERE AS WELL, WHICH WAS RESOLVED  
15 BY YOUR HONOR'S RULING ON PRIVILEGE LOG -- OR SORRY -- THE --

16 MS. WALSH: LITIGATION HOLD.

17 MR. CHAPUT: -- LITIGATION HOLD.

18 MS. WALSH: YOUR HONOR, SORRY TO INTERRUPT, BUT KIND  
19 OF IN THE VEIN OF A THEME THAT YOU'VE BEEN APPROPRIATELY  
20 EMPHASIZING THROUGHOUT TODAY, MR. CHAPUT AND I ALSO HAD A  
21 CHANCE TO MEET THIS MORNING BEFORE COURT AND TOUCH BASE ABOUT  
22 THE ESI TOPICS OF THIS 30(B) (6) NOTICE, AND AS OFTEN HAPPENS  
23 WHEN WE WERE TOGETHER IN PERSON, WE REALIZED THAT WE DO BELIEVE  
24 THAT THERE'S ROOM FOR ADDITIONAL MEET AND CONFER ON THOSE  
25 TOPICS, AND WE HAVE SCHEDULED A TIME TO DO THAT IN PERSON NEXT

1 WEEK HERE IN SAN FRANCISCO, WITH A GOAL OF EITHER ELIMINATING  
2 OUR DISPUTES, OR CERTAINLY NARROWING THEM FURTHER SO AS NOT TO  
3 BURDEN THE COURT WITH A SERIES OF COMPLEX ISSUES, WHICH WE  
4 APPRECIATE.

5 THE COURT: AND WOULD THAT COVER ESSENTIALLY, IS IT  
6 THE LARGE, THE FOUR MAIN GROUPINGS OF TOPICS? WOULD THAT COVER  
7 GROUP 3 AND 4, THE DOCUMENT POLICIES AND THE INFORMATION ABOUT  
8 THE REPOSITORIES, ET CETERA?

9 MR. CHAPUT: THAT'S CORRECT, YOUR HONOR. THAT'S  
10 EVERYTHING FROM TOPIC 10 TO THE END OF THE NOTICE, 37.

11 THE COURT: OKAY. SO DO YOU HAVE A DATE WHEN YOU'RE  
12 GOING TO MEET AND CONFER?

13 MR. CHAPUT: NEXT WEDNESDAY, THE 29TH.

14 THE COURT: NEXT WEDNESDAY. AND --

15 MS. WALSH: FURTHER, YOUR HONOR, TO FURTHER EXPEDITE  
16 THIS --

17 THE COURT: YES.

18 MS. WALSH: -- MR. CHAPUT POINTED OUT TO ME THAT  
19 TOPIC 7 IS ONE WHERE WE REACHED AN AGREEMENT THAT THE  
20 PLAINTIFFS -- DEFENDANTS HAVE -- OR META DEFENDANTS HAVE  
21 OFFERED TO MAKE A PRODUCTION OF WRITTEN INFORMATION AND, I  
22 BELIEVE, SOME DOCUMENTATION, BUT IN ANY EVENT, SOME PRODUCTION  
23 TO US OF INFORMATION REGARDING COMPENSATION, WHICH WE WILL  
24 REVIEW. WE, OF COURSE, RESERVE OUR RIGHTS TO SEEK TESTIMONY  
25 REGARDING THOSE AFTER REVIEWING THAT INFORMATION.

1           BUT THAT HAS BEEN A MECHANISM THAT I KNOW OTHER OF THE  
2           DEFENDANTS HAVE BEEN ABLE TO USE IN RESOLVING SOME OF THESE  
3           30(B) (6) TOPICS, SO WE'RE GOING TO GIVE IT A SHOT FOR THAT ONE,  
4           TOO.

5           THE COURT: OKAY. ANY OTHERS YOU'VE AGREED UPON?

6           MR. CHAPUT: SO FOR PURPOSES OF THIS AFTERNOON, I  
7           THINK OUR DISPUTES ARE LIMITED TO 3, 4, 5, AND 6, YOUR HONOR.

8           THE COURT: OKAY. SO ON 3, 4 -- OKAY. SO I DID  
9           SEE -- ESPECIALLY ON 3, 5, AND 6, MY UNDERSTANDING IS THEY --  
10          THEY, META -- OFFERED TO GIVE YOU SOME DOCUMENTS TO SHOW  
11          REPORTING LINES --

12          MS. WALSH: CORRECT.

13          THE COURT: -- AND EMPLOYEES AND ALL THAT, AND  
14          HAVE -- BUT THAT WASN'T ACCEPTED? OR WAS IT ACCEPTED?

15          MR. CHAPUT: SO WE HAVE MADE THOSE PRODUCTION, YOUR  
16          HONOR. WE'VE PROVIDED EXTENSIVE REPORTING LINE DOCUMENTATION.

17          WE ALSO MET AND CONFERRED WITH PLAINTIFFS TO EXPLAIN WHAT  
18          EACH OF THE COLUMNS MEANT AND HOW THEY COULD INTERPRET AND  
19          UNDERSTAND THOSE DOCUMENTS.

20          WE ALSO, BEYOND JUST THAT, OFFERED TO PROVIDE WRITTEN  
21          TESTIMONY REGARDING THE GENERAL CORPORATE STRUCTURE AND  
22          RESPONSIBILITIES OF THE VARIOUS CORPORATE ENTITY META  
23          DEFENDANTS SO THAT WE COULD EXPLAIN, YOU KNOW, FOR EXAMPLE, THE  
24          DIFFERENCE BETWEEN INSTAGRAM LLC AND META PLATFORMS, INC., AND  
25          WE FELT THAT THAT WAS FAIRLY RESPONSIVE TO WHAT PLAINTIFFS ARE

1 SEEKING, WHILE, YOU KNOW, REALLY REDUCING THE BURDEN TO  
2 SOMETHING THAT IS MANAGEABLE FOR A COMPANY, AS OPPOSED TO  
3 PROVIDING GRANULAR TESTIMONY ON EACH OF THE MANY INDIVIDUAL  
4 TEAMS THAT PLAINTIFFS ARE ASKING FOR TESTIMONY ON.

5 THE COURT: WHY WAS THAT NOT SUFFICIENT?

6 MS. WALSH: SO, YOUR HONOR, WE APPRECIATE THE  
7 PRODUCTION OF THESE CHARTS, AND I ACTUALLY HAVE SOME EXAMPLES  
8 TO PROVIDE YOUR HONOR IF YOU'D LIKE TO LOOK AT THEM AND  
9 UNDERSTAND WHAT THEY ARE.

10 UNDOUBTEDLY HELPFUL TO US IN UNDERSTANDING SOME OF THESE  
11 ISSUES.

12 BUT ALSO, IN OUR VERY STRONG VIEW, DO NOT GO FAR ENOUGH IN  
13 PROVIDING THE BASIC INFORMATION THAT WE'RE SEEKING IN THIS CASE  
14 AND, FRANKLY, IS ROUTINELY SOUGHT IN CIVIL LITIGATION REGARDING  
15 THE STRUCTURE, FUNCTION, AND OPERATION OF A CORPORATE  
16 DEFENDANT.

17 SO WHILE WE APPRECIATE THAT INFORMATION AND IT HAS BEEN  
18 HELPFUL, IT'S NOT A SUBSTITUTE FOR UNDERSTANDING MORE BROADLY  
19 HOW THE COMPANY IS ORGANIZED AND HOW IT OPERATES, AND IT'S  
20 CERTAINLY NOT A SUBSTITUTE FOR SWORN TESTIMONY TO WHICH WE'RE  
21 ENTITLED UNDER 30 (B) (6).

22 I'D NOTE, YOUR HONOR, A COUPLE OF THINGS. FIRST OF ALL,  
23 ON THESE PARTICULAR TOPICS THAT ARE AT ISSUE TODAY, THE OTHER,  
24 I BELIEVE, BOTH TIKTOK AND YOUTUBE, THE DEFENDANTS, HAVE AGREED  
25 TO PROVIDE TESTIMONY REGARDING THESE TOPICS. AT LEAST ONE OF

1 THOSE DEPOSITIONS HAS GONE FORWARD. SO FAR AS I'M AWARE, IT  
2 WAS NOT -- THERE WERE NOT ISSUES REGARDING THE ABILITY TO  
3 ADEQUATELY PREPARE A WITNESS TO ANSWER THESE QUESTIONS.

4 AND I WILL SAY THAT ONE OF THE ISSUES WE HAVE WITH NOT  
5 HAVING SOMEONE AT A DEPOSITION UNDER OATH TO WHOM WE CAN ASK  
6 QUESTIONS IS THESE CHARTS -- WHICH, AGAIN, I'M HAPPY TO HAND UP  
7 TO YOUR HONOR SOME EXAMPLES -- THEY'RE QUITE COMPLEX.

8 THEY DO PROVIDE HELPFUL INFORMATION. THEY RAISE A LOT OF  
9 QUESTIONS. WE HAVE ATTEMPTED TO GET ANSWERS TO THOSE QUESTIONS  
10 FROM META. AS IS ALMOST ALWAYS THE CASE, THERE HAVE BEEN  
11 PRODUCTIVE CONVERSATIONS.

12 HOWEVER, WE'VE SORT OF REACHED AN END POINT WHERE THEY'VE  
13 SAID, WE'RE NOT GOING TO PROVIDE ANY ADDITIONAL EXPLANATION  
14 ABOUT THESE CHARTS UNLESS AND UNTIL YOU WITHDRAW THESE  
15 DEPOSITION TOPICS, WHICH WE SIMPLY CAN'T DO. WE CANNOT DO THAT  
16 TO OUR CLIENTS AT THIS POINT, TO FORGO THE OPPORTUNITY TO HAVE  
17 AN EMPLOYEE OF THIS COMPANY BE PREPARED TO ANSWER QUESTIONS  
18 UNDER OATH REGARDING HOW THE COMPANY OPERATES AND FUNCTIONS.

19 WE'VE MADE EFFORTS TO -- WE'VE MADE SEVERAL OFFERS TO THE  
20 DEFENDANTS, WHICH IS SET FORTH IN OUR MEET AND CONFER LETTERS,  
21 ABOUT HOW WE MIGHT NARROW THIS. WE'VE MADE ATTEMPTS TO EXPLAIN  
22 WHAT EXACTLY WE ARE INTERESTED IN KNOWING MORE ABOUT AND HOW IT  
23 PERTAINS TO THIS CASE.

24 I RECOGNIZE YOUR HONOR'S STANDING ORDER, HOW IT QUITE  
25 WISELY DOES NOT ALLOW FOR ATTACHMENT OF MEET AND CONFER

1 CORRESPONDENCE.

2 BUT WE HAVE, IN WRITING, MADE EFFORTS TO, TO NARROW THESE  
3 TOPICS. WE THINK THEY'RE FINE AS DRAFTED, BUT IN AN ATTEMPT TO  
4 TRY TO ADDRESS THE CONCERNS AND MOVE FORWARD AND GET THIS  
5 TESTIMONY, WE HAVE DONE THAT.

6 AND WE'D VERY MUCH LIKE TO BE ABLE TO PROCEED ON THESE  
7 BASIC TABLE SETTING TOPICS THAT ARE IMPORTANT AND WILL HELP US  
8 TARGET AND STREAMLINE ADDITIONAL DISCOVERY AS WE GO FORWARD.

9 MR. CHAPUT: YOUR HONOR, IF I MAY, A FEW POINTS.

10 FIRST OF ALL, THE TESTIMONY PLAINTIFFS ARE SEEKING WITH  
11 TOPICS 3, 5, AND 6 AREN'T JUST ABOUT HOW THE COMPANY OPERATES  
12 AND IS STRUCTURED. IT'S ASKING FOR GRANULAR TESTIMONY ABOUT  
13 PARTICULAR TEAMS, THE ORGANIZATION OF PARTICULAR TEAMS, WHO IS  
14 RESPONSIBLE FOR THAT TEAM, FOR EACH TEAM THROUGHOUT THE  
15 RELEVANT TIME PERIOD. THAT IS SIGNIFICANT AND EXPANSIVE  
16 TESTIMONY THAT WOULD BE VERY BURDENOME FOR META TO PREPARE A  
17 WITNESS TO TESTIFY ON.

18 AND, IN FACT, THERE'S JUST AS MUCH BURDEN THERE FOR META  
19 AS THERE IS FOR PLAINTIFFS TO GO OUT AND DEPOSE THE ACTUAL  
20 INDIVIDUALS WHO WORKED ON THOSE TEAMS AND FIND OUT BOTH THOSE  
21 INDIVIDUALS' RESPONSIBILITIES AND HOW THEIR TEAMS WERE  
22 STRUCTURED.

23 AND I WOULD POINT YOUR HONOR TO THE WILLY CASE THAT'S  
24 CITED IN OUR BRIEF WHICH SAYS THAT, YOU KNOW, WHEN PERCIPIENT  
25 WITNESSES ARE AVAILABLE TO TESTIFY, IT IS UNDULY BURDENOME TO

1 EXPECT THE ENTITY TO INTERVIEW THEM AND THEN BIND ITSELF TO ANY  
2 MISTAKES MADE IN RELAYING THEIR TESTIMONY SECONDHAND THROUGH A  
3 30 (B) (6) DEPOSITION.

4 THAT'S EXACTLY WHAT PLAINTIFFS ARE EXPECTING US TO DO HERE  
5 IS GO OUT AND INTERVIEW A LARGE NUMBER OF PEOPLE TO UNDERSTAND  
6 ALL OF THESE DIFFERENT TEAMS, AND THEN TRY AND CONVEY ALL OF  
7 THAT INFORMATION THROUGH A SINGLE PERSON, WHEN PLAINTIFFS ARE  
8 JUST AS ABLE TO DEPOSE THE ACTUAL INDIVIDUALS.

9 ADDITIONALLY, COUNSEL SAID THAT META HAD REFUSED TO ANSWER  
10 FOLLOW-UP QUESTIONS ON THE WRITTEN DOCUMENTATION WE'VE ALREADY  
11 PROVIDED. THAT'S NOT QUITE CORRECT. WE ACTUALLY DID OFFER TO  
12 ANSWER PLAINTIFFS' FOLLOW-UP QUESTIONS AND SAID WE WOULD DO SO  
13 IN WRITING AND UNDER OATH IF THEY WOULD ACCEPT THAT AS A  
14 COMPROMISE TO DROP THESE 30 (B) (6) TOPICS, AND THEY DECLINED TO  
15 ACCEPT THAT OFFER.

16 THE COURT: WHY ISN'T DOING THIS ON A WRITTEN  
17 DEPOSITION THE WAY TO GO?

18 MS. WALSH: BECAUSE, YOUR HONOR, WE -- I MEAN, FOR  
19 ONE THING, WHAT 30 (B) (6) PROVIDES IS -- WELL, LET ME -- MAY I  
20 ADDRESS THE POINTS THAT MR. CHAPUT MADE REGARDING --

21 THE COURT: ANSWER MY QUESTION FIRST.

22 MS. WALSH: WHY ISN'T -- SO IT POTENTIALLY COULD BE.  
23 THAT HAS NOT BEEN ON OFFER BY META, AT LEAST WITH RESPECT TO  
24 THE SCOPE OF OUR TOPICS.

25 WHAT META HAS PROVIDED THUS FAR IS NOT, YOU SEND US

1 QUESTIONS, WE WILL PROVIDE ANSWERS.

2 WHAT META HAS PROVIDED IS -- AGAIN, WHAT I'M HAPPY TO  
3 PROVIDE, YOU'LL NEED YOUR READING GLASSES (INDICATING) -- BUT  
4 QUITE A COMPLEX CHART THAT'S PRETTY HARD TO DECIPHER. IT TELLS  
5 US NOTHING ABOUT THE ACTUAL STRUCTURE OF THE TEAMS. IT SIMPLY  
6 LISTS CUSTODIANS AND WHO THEY REPORT TO AND WHO REPORTS TO  
7 THEM.

8 THEORETICALLY I SUPPOSE WE COULD GET OUT A GIANT WHITE  
9 BOARD AND START WRITING ALL THESE NAMES DOWN AND TRY TO FIGURE  
10 OUT THE STRUCTURE.

11 BUT EVEN THEN, IT WOULDN'T ALLOW US TO UNDERSTAND THE  
12 TEAMS AND THE DEPARTMENTS AND HOW THEY FIT IN.

13 SO WE'VE GOT THAT.

14 WE'VE GOT THEIR OFFER TO PROVIDE, YOU KNOW, WRITTEN  
15 INFORMATION ABOUT THE STRUCTURE OF THE THREE DIFFERENT, OR THE  
16 DIFFERENT META DEFENDANT ENTITIES.

17 BUT, AGAIN, THAT'S NOT AN OFFER TO PROVIDE INFORMATION OR  
18 ANSWER OUR QUESTIONS, THE QUESTIONS THAT WE HAVE ABOUT HOW THIS  
19 COMPANY IS STRUCTURED AND HOW IT OPERATES.

20 WITH RESPECT TO SOME OF THE BURDEN ARGUMENTS, YOUR HONOR,  
21 RESPECTFULLY, THIS IS WHAT CORPORATE -- THIS IS WHAT DISCOVERY  
22 IS IN A CIVIL CASE. HAVING PRACTICED ON THE DEFENSE SIDE FOR  
23 MANY YEARS, I HAVE SPENT TIME INTERVIEWING CORPORATE EMPLOYEES  
24 ABOUT INFORMATION THAT THEY KNOW, CONDENSING THAT INFORMATION,  
25 PROVIDING IT TO A CORPORATE REP SO THAT A CORPORATE REP CAN

1 PROVIDE TESTIMONY UNDER OATH THAT DOES BIND THE COMPANY. THAT  
2 IS THE PURPOSE OF 30(B) (6).

3 IF A MISTAKE IS MADE, OBVIOUSLY THAT'S SOMETHING THAT CAN  
4 BE CORRECTED, EITHER ON A BREAK OR AFTERWARDS. THAT IS NOT --  
5 THE POSSIBILITY OF A MISTAKE BEING MADE IS NOT A REASON TO  
6 DEPRIVE PLAINTIFFS OF THE DISCOVERY THAT IS PERMITTED UNDER  
7 30(B) (6).

8 FURTHER, REGARDING MR. CHAPUT'S CONCERN THAT WE'RE ASKING  
9 HIM TO PROVIDE ALL OF THIS DIFFERENT INFORMATION ABOUT ALL OF  
10 THESE DIFFERENT TEAMS OVER TIME, IN OUR LAST LETTER TO META --  
11 WHICH WE HAVEN'T RECEIVED A RESPONSE YET, BUT I'M HAPPY TO TALK  
12 TO MR. CHAPUT AND HIS COLLEAGUES MORE ABOUT IT -- WE WROTE TO  
13 THEM, WE SAID, PLAINTIFFS UNDERSTAND THAT META DEFENDANTS'  
14 INTERNAL STRUCTURES MAKES IT DIFFICULT TO IDENTIFY ALL THE  
15 PERSONS RESPONSIBLE FOR THE FEATURES IDENTIFIED IN TOPIC 5 FROM  
16 LAUNCH TO PRESENT DAY. PLAINTIFFS ARE WILLING TO ACCEPT  
17 TESTIMONY THAT IDENTIFIES WHICH TEAM, TEAMS, ARE RESPONSIBLE  
18 FOR THE DEVELOPMENT OF THE LAUNCH OF EACH FEATURE, THE TEAM  
19 MEMBERS INVOLVED IN THAT DEVELOPMENT AND LAUNCH, AND THE  
20 PERSONS WITH DECISION-MAKING AUTHORITY REGARDING THAT LAUNCH.

21 SO THAT IS AN EXAMPLE OF OUR ATTEMPTING TO NARROW THIS TO  
22 ADDRESS THE CONCERNS ABOUT BURDEN, NOTWITHSTANDING THAT I DON'T  
23 THINK THAT THIS IS AN OVERLY BURDENSOME PROCESS.

24 WE HAVEN'T GOTTEN AN ANSWER TO THAT AND WHETHER THAT WOULD  
25 HELP.

1 AND EVEN IF THAT INFORMATION WAS INITIALLY PROVIDED  
2 THROUGH WRITTEN TESTIMONY, FRANKLY, I THINK THAT IT IS -- THAT  
3 IT IS INEFFICIENT, BECAUSE WE DO OFTEN -- AND I KNOW YOUR HONOR  
4 HAS TAKEN 30 (B) (6) DEPOSITIONS -- THERE ARE FOLLOW-UP  
5 QUESTIONS. THERE'S ADDITIONAL INFORMATION THAT WE SEEK TO  
6 OBTAIN.

7 AND TO BE REALLY CANDID, I -- GIVEN THE OTHER DEFENDANTS  
8 HAVE SEEN FIT TO PUT SOMEONE IN A DEPOSITION, TO TAKE THE OATH,  
9 TO PROVIDE THIS INFORMATION, THIS IS VERY BREAD AND BUTTER  
10 TABLE SETTING KIND OF DISCOVERY, WE NEED IT TO HAPPEN SOON, WE  
11 NEED IT TO HELP MANAGE THE REST OF THIS DISCOVERY PROCESS.

12 IF AND WHEN THEY FEEL THAT -- IF THEY HAVE SPECIFIC  
13 CONCERNS ABOUT IT, OTHER THAN THE ONES THEY'VE ALREADY  
14 ARTICULATED THAT WE'VE ATTEMPTED TO ADDRESS, WE WILL ATTEMPT TO  
15 ADDRESS THEM.

16 BUT IT'S TIME TO MOVE FORWARD WITH THIS PROCESS NOW, YOUR  
17 HONOR.

18 MR. CHAPUT: SO STARTING WHERE MS. WELSH LEFT OFF, I  
19 DON'T UNDERSTAND HOW THIS EXPANSIVE TESTIMONY THEY'RE SEEKING  
20 WOULD POSSIBLY HELP THEM MOVE DISCOVERY FORWARD WHEN WE HAVE  
21 AGREED ON CUSTODIANS, WE THINK WE'RE CLOSE TO LARGELY AGREEING  
22 ON SEARCH TERMS. THE PARTIES ARE VERY FAR ALONG IN DEFINING  
23 THE SCOPE OF WRITTEN DISCOVERY IN THIS CASE.

24 ADDITIONALLY, THE REPORTING LINE INFORMATION THAT WE'VE  
25 ALREADY PRODUCED INCLUDES, FOR EACH OF THE 127 CUSTODIANS THAT

1 WE'VE AGREED TO, THE DIRECT REPORTS OF EACH OF THOSE  
2 INDIVIDUALS, SO ONE LEVEL DOWN, THE TEAM, THE NAME OF THE TEAM,  
3 THE AREA OF THE COMPANY THAT TEAM IS ALLOCATED TO, THAT  
4 INDIVIDUAL'S MANAGER, AND THEN ALL OF THE REPORTING LINE  
5 INFORMATION UP TO THE CEO OF THE COMPANY.

6 SO THEY HAVE INFORMATION ABOUT WHO EVERYONE WAS REPORTING  
7 TO, AND THAT ALLOWS YOU TO UNDERSTAND HOW THE PIECES FIT  
8 TOGETHER WITH RESPECT TO THE CUSTODIANS THAT WE'VE AGREED TO  
9 WITH PLAINTIFFS.

10 MS. WALSH: YOUR HONOR, WHAT IT DOESN'T DO IS TELL US  
11 WHO WAS RESPONSIBLE -- FOR EXAMPLE, IF YOU LOOK AT THE SUBPARTS  
12 TO TOPIC 5, WHO WAS RESPONSIBLE FOR USER ACCOUNT CREATION AND  
13 DEACTIVATION? WHO WAS RESPONSIBLE FOR PARENTAL CONTROLS? WHO  
14 WAS RESPONSIBLE FOR USER ENGAGEMENT AND GROWTH?

15 AND THE WAY IN WHICH IT COULD HELP TARGET DISCOVERY IS  
16 SOMETHING I WOULD THINK THE META DEFENDANTS WOULD WELCOME,  
17 WHICH IS TO HELP US IN PRIORITIZING DEPOSITIONS, TO HELP US IN  
18 TARGETING OUR DEPOSITION QUESTIONING, TO HELP US IN HAVING --  
19 THE MORE INFORMATION WE HAVE BEFORE WE GO INTO THE PROCESS OF  
20 TAKING DEPOSITIONS, THE MORE TARGETED WE CAN BE, WHICH IS VERY  
21 MUCH IN PLAINTIFFS' INTERESTS FOR OBVIOUS REASONS, AND I WOULD  
22 IMAGINE IS IN THE META DEFENDANTS' INTERESTS AS WELL.

23 THE COURT: MR. CHAPUT, ARE YOU UNWILLING TO PROVIDE  
24 IDENTITIES OF WHICH TEAM, TEAMS, ARE RESPONSIBLE FOR THE  
25 DEVELOPMENT AND LAUNCH OF EACH FEATURE, THE TEAM MEMBERS

1 INVOLVED IN THAT DEVELOPMENT AND LAUNCH, AND THE PERSON WITH  
2 DECISION-MAKING AUTHORITY REGARDING THE LAUNCH? IS THAT  
3 JUST -- JUST LET ME ASK YOU, IS THAT IMPOSSIBLE TO GIVE THEM?

4 MR. CHAPUT: SO, YOUR HONOR, I DON'T BELIEVE IT WOULD  
5 BE IMPOSSIBLE.

6 IT WOULD BE BURDENOME TO DO SO, PARTICULARLY REQUIRING  
7 SOMEONE TO MEMORIZIZE ALL OF THAT INFORMATION FOR ALL OF THE  
8 DIFFERENT TEAMS --

9 THE COURT: I -- I WAS ACTUALLY ASKING WHETHER YOU  
10 DIRECTLY COULD JUST GET THAT INFORMATION AND GIVE IT TO THEM  
11 AND CUT THROUGH ALL THIS.

12 MR. CHAPUT: I THINK WE POSSIBLY COULD. IF WE'RE  
13 TALKING ABOUT PROVIDING A WRITTEN RESPONSE, THEN IF WE'RE  
14 TALKING ABOUT THE NAMED FEATURES SPECIFICALLY, I THINK THAT  
15 WOULD PROBABLY BE ACHIEVABLE.

16 THE COURT: OKAY. SO IF THAT'S WHAT YOU OFFERED,  
17 THAT YOU WERE GETTING WHAT YOU WANTED FOR THIS DEPOSITION, THEN  
18 WHY DON'T YOU DO THIS BY WRITTEN DEPOSITION QUESTIONS? YOU CAN  
19 MAKE THE QUESTIONS AS LONG AND AS DETAILED AND AS NUMEROUS AS  
20 YOU WANT TO GET ALL THIS.

21 MS. WALSH: I GUESS I WOULD ASK YOUR HONOR, WHY WOULD  
22 WE DEVIATE FROM THE STANDARD PRACTICE OF --

23 THE COURT: RULE 31 IS A STANDARD RULE IN THE FEDERAL  
24 RULES OF CIVIL PROCEDURE. I DON'T KNOW IF IT'S -- HOW OFTEN  
25 IT'S USED, BUT IT'S A STANDARD RULE.

1 MS. WALSH: BECAUSE I THINK THAT THERE IS -- I THINK  
2 THAT THERE IS A DIFFERENCE BETWEEN HAVING SOMEONE UNDER OATH,  
3 LIVE, ANSWERING QUESTIONS AND WE CAN ASK FOLLOW-UP QUESTIONS.

4 THE COURT: THE DEPOSITION WRITTEN QUESTIONS IS UNDER  
5 OATH, IT'S NOT LIVE, BUT IT'S UNDER OATH, AND IT GETS YOU THE  
6 INFORMATION YOU WANTED PRESUMABLY IN A MORE DIRECT WAY BECAUSE  
7 YOU GET IT IN WRITING WITHOUT HAVING TO -- I MEAN, IT'S UP TO  
8 YOU TO WRITE THE QUESTIONS AS PRECISELY AS YOU WANT.

9 MS. WALSH: WELL, YOUR HONOR, ANOTHER CONSIDERATION  
10 THAT I THINK IS IMPORTANT HERE IS THAT OFTEN IN CASES SUCH AS  
11 THIS, WE END UP CALLING THE COMPANY AS A WITNESS AT TRIAL AND  
12 PLAYING PORTIONS OF A 30(B) (6) WITNESS TO A JURY.

13 THROUGH WRITTEN QUESTIONS, WE WOULD NOT BE ABLE TO DO  
14 THAT.

15 THE COURT: YOU WOULD PLAY TO THE JURY WHICH TEAM,  
16 TEAMS, ARE RESPONSIBLE -- YOU'LL HAVE A DOCUMENT YOU CAN SHOW.

17 MS. WALSH: WELL, YOUR HONOR, FOCUSSING ON THOSE  
18 QUESTIONS IN PARTICULAR, PERHAPS WE WOULDN'T PLAY THAT.

19 BUT THERE ARE OTHER ASPECTS OF THINGS THAT WE ARE ENTITLED  
20 TO HAVE THE COMPANY'S TESTIMONY ON THAT WE MAY WANT TO PRESENT  
21 TO A JURY.

22 THE COURT: SURE. YOU GET THE TESTIMONY UNDER  
23 RULE 31.

24 MS. WALSH: YEAH. I GUESS I WOULD SAY, YOUR HONOR,  
25 THAT I DON'T THINK THAT THERE'S ANY REAL DISPUTE THAT WHAT

1 WE'RE TALKING ABOUT AND WHAT WE'RE SEEKING TO OBTAIN IS  
2 RELEVANT.

3 I'M NOT -- IT APPEARS THAT WHAT WE'RE TALKING ABOUT IS  
4 THAT META IS SUGGESTING IT WOULD BE TOO BURDENSOME TO TRY TO  
5 PREPARE A WITNESS, AS THE OTHER DEFENDANTS HAVE DONE, TO COME  
6 AND TO BE DEPOSED, AND I DON'T UNDERSTAND THE BASIS FOR SAYING  
7 THAT THAT'S TOO BURDENSOME.

8 WHY IS IT THAT WE WOULD DEVIATE FROM WHAT THE OTHER  
9 DEFENDANTS ARE DOING HERE WITH RESPECT TO THESE TOPICS?

10 THE COURT: OKAY. BUT WHAT I'M TRYING TO DO IS  
11 FIGURE OUT IF THERE'S A WAY TO JUST COMPLETELY MOOT THE ISSUE  
12 BY DOING IT -- YOU GET THE INFORMATION YOU WANT, YOU GET THE  
13 DISCOVERY YOU WANT, IT'S UP TO YOU TO WRITE THE QUESTIONS OUT  
14 HOWEVER IS APPROPRIATE, AND THEN -- AS YOU SAID, IT'S TABLE  
15 SETTING DISCOVERY. I MEAN, YOU COULD DO THIS BY INTERROGATORY  
16 AS WELL; RIGHT?

17 MY ONLY POINT IS YOU GET TESTIMONY UNDER OATH FROM --  
18 IT'S -- 30(B)(6)'S ARE DONE UNDER RULE 31. IN OTHER WORDS, IT  
19 IS UNDER OATH ON BEHALF OF THE COMPANY.

20 AND IT MOOTS ANY ARGUMENTS FROM THIS SIDE, I'M NOT GOING  
21 TO HEAR ANY ARGUMENTS ABOUT BURDEN AND COMPLEXITY AND ALL THAT,  
22 AND IT GETS YOU THE INFORMATION YOU WANT.

23 IF IT TURNS OUT, AND I DON'T BELIEVE IT'S GOING TO HAPPEN,  
24 BUT IF IT TURNS OUT THAT META PROVIDES WHOLLY INADEQUATE  
25 RESPONSES TO THE WRITTEN DEPOSITION QUESTIONS, I ASSUME YOU'LL

1 COME BACK TO ME ON A MOTION TO COMPEL AND I MAY AT THAT POINT  
2 THINK THAT A LIVE DEPOSITION IS WARRANTED.

3 MS. WALSH: YOUR HONOR, I GUESS WHAT I WOULD SAY IS A  
4 COUPLE OF THINGS BEING -- I'M SORRY. I'M BEING PASSED MULTIPLE  
5 NOTES, SOME OF WHICH I CAN'T READ.

6 I GUESS WHAT I WOULD SAY IS IF WE CAN WRITE OUR QUESTIONS  
7 AND --

8 THE COURT: THAT'S WHAT RULE 31 ALLOWS.

9 MS. WALSH: -- AND THERE'S NOT A PROTRACTED MEET AND  
10 CONFER AND BACK AND FORTH WITH OBJECTIONS THAT WOULD INSANELY  
11 PROLONG THIS PROCESS, AND --

12 THE COURT: SHOW ME WHERE IN RULE 31 THERE'S A --  
13 THEY GET TO OBJECT AND THEN -- THEY GET TO SOMEHOW DELAY THE  
14 DEPOSITION BY MEET AND CONFER? THEY DON'T GET TO DO THAT.

15 MS. WALSH: I 100 PERCENT AGREE, AND I THINK AS LONG  
16 AS META UNDERSTANDS THAT THAT'S TRUE, THAT THEY NEED TO ANSWER  
17 THESE QUESTIONS DIRECTLY, AND IF WE FEEL THAT THE ANSWERS THAT  
18 ARE BEING OBTAINED ARE NOT RESPONSIVE, ARE NOT CLEAR, ARE NOT  
19 PROVIDING THE INFORMATION WE NEED, WE HAVE THE ABILITY TO COME  
20 BACK TO YOUR HONOR --

21 THE COURT: YOUR FIRST DUTY IS TO TRY TO TALK IT OUT  
22 AND RESOLVE IT BEFORE YOU COME BACK TO ME; RIGHT?

23 MS. WALSH: OF COURSE, YOUR HONOR, AND AS I HOPE  
24 WE'VE DEMONSTRATED TO YOUR HONOR, WE ARE ABLE TO DO THAT AND WE  
25 HAVE BEEN DOING THAT.

1 IF YOUR HONOR'S GUIDANCE IS THAT, WITH RESPECT TO ALL OF  
2 THESE TOPICS, YOU'D LIKE US TO PROVIDE A DETAILED SET OF  
3 QUESTIONS TO GET ANSWERS --

4 THE COURT: SOME LAWYER'S GOT TO PREPARE THE  
5 QUESTIONS FOR THE DEPOSITION IF IT WERE LIVE ANYWAY; RIGHT?

6 MS. WALSH: I'M FAMILIAR WITH THAT PROCESS, YES.

7 THE COURT: RIGHT. SO IT'S NOT THAT MUCH EXTRA WORK,  
8 AND YOU GET THE RESPONSE IN WRITING.

9 MR. CHAPUT, ASSUME THAT IS GOING TO BE FORTHCOMING AND  
10 MAKE GOOD FAITH, YOU KNOW, EFFORTS TO BE FORTHCOMING WITH THE  
11 INFORMATION RESPONSIVE TO THE QUESTIONS, AND DO NOT STAND ON  
12 OBJECTIONS TO EACH QUESTION.

13 MR. CHAPUT: WE WILL, YOUR HONOR, ASSUMING THE  
14 QUESTIONS ARE WITHIN THE SCOPE OF WHAT YOUR HONOR JUST  
15 DESCRIBED AND WHAT COUNSEL HAS BEEN DESCRIBING TODAY AS THE  
16 INFORMATION THEY NEED.

17 OF COURSE, IF THE QUESTIONS GO FAR BEYOND THAT TO  
18 ADDITIONAL TOPICS THAT WE HAVEN'T DISCUSSED, THAT HAVEN'T BEEN  
19 THE SUBJECT OF BRIEFING, WE WOULD PROBABLY ASK TO HAVE A  
20 CONVERSATION.

21 THE COURT: JUST TALK.

22 JUST SO I'M CLEAR, WE'RE TALKING ABOUT QUESTION -- A  
23 WRITTEN DEPOSITION ON TOPICS 3, 4, 5, AND 6.

24 MS. WALSH: YES, AS THOSE TOPICS ARE PRESENTED IN OUR  
25 NOTICE, CORRECT.

1 THE COURT: RIGHT.

2 MR. CHAPUT: CORRECT, AND AS COUNSEL HAS BEEN  
3 DESCRIBING THE TESTIMONY THEY'RE SEEKING FROM THOSE TOPICS.

4 MS. WALSH: WELL, I WANT TO BE CLEAR ABOUT THAT, YOUR  
5 HONOR. I -- THE TESTIMONY WE ARE SEEKING IS TESTIMONY  
6 RESPONSIVE TO THE TOPICS IN OUR NOTICE. THAT'S WHAT WE'RE HERE  
7 ON TODAY.

8 THE EXAMPLE I GAVE REGARDING THE TEAMS, I LAID THAT OUT TO  
9 SHOW PART OF THE MEET AND CONFER PROCESS IN WHICH WE ATTEMPTED  
10 TO ALLEVIATE SOME OF META'S CONCERN BY FOCUSING ON SOME OF  
11 THE INFORMATION THAT WE'RE LOOKING FOR.

12 BUT IT'S CERTAINLY NOT EXCLUSIVE OF THE INFORMATION. THE  
13 INFORMATION WE'RE LOOKING FOR IS THE INFORMATION THAT FALLS  
14 WITHIN THE TOPICS SET FORTH IN OUR NOTICE.

15 THE COURT: IS THAT CLEAR ENOUGH FOR YOU, MR. CHAPUT?

16 MR. CHAPUT: IT IS IF THERE'S -- IF WE THINK THAT  
17 TOPICS IN THE WRITTEN QUESTIONS WE GET ARE BEYOND THE SCOPE, WE  
18 WILL, OF COURSE, CONFER WITH COUNSEL EXPEDITIOUSLY SO WE CAN  
19 RESOLVE THOSE BEFORE SENDING THEM OUR ANSWERS.

20 THE COURT: BUT THE PLAINTIFFS NEED TO WRITE THEIR  
21 QUESTIONS IN A WAY THAT ARE TARGETED TO WHAT YOU REALLY NEED  
22 OUT OF TOPICS 3, 4, 5, AND 6, OF COURSE. IT'S NOT A 10,000  
23 WRITTEN QUESTION DEPOSITION, I THINK.

24 MS. WALSH: 100 PERCENT AGREE, YOUR HONOR.

25 JUST TO BE VERY CLEAR, THERE HAVE BEEN LARGE, DRAMATIC

1           OBJECTIONS TO THE SCOPE OF THESE TOPICS, WHICH WE DO NOT AGREE  
2           WITH, AND IT'S PART OF THE REASON WE'RE HERE TODAY.

3           I TAKE YOUR HONOR'S GUIDANCE TO BE THAT WE ARE TO WRITE  
4           QUESTIONS THAT FALL WITHIN THE SCOPE OF THESE TOPICS AS SET  
5           FORTH.

6           THE COURT: MR. CHAPUT, YOU UNDERSTAND THAT UNDER THE  
7           FEDERAL RULES, THERE ARE ONLY LIMITED SITUATIONS IN WHICH YOU  
8           AS COUNSEL CAN INSTRUCT A WITNESS NOT TO ANSWER?

9           MR. CHAPUT: I DO, YOUR HONOR, YES.

10          THE COURT: SO YOU CAN MAKE OBJECTIONS, BUT THAT  
11         DOESN'T RELIEVE YOUR CLIENT OF THE OBLIGATION TO ANSWER  
12         QUESTIONS, SUBJECT TO SOMETHING LIKE PRIVILEGE OR ONE OF THE  
13         EXCEPTIONS TO THAT.

14          MR. CHAPUT: I UNDERSTAND, YOUR HONOR.

15          THE COURT: OKAY. SO HOPEFULLY YOU CAN WORK THIS OUT  
16         AND THIS PROCEDURE WILL GET YOU THE INFORMATION, PLAINTIFFS THE  
17         INFORMATION THEY WANT, ALLOW META TO COMPILE THE INFORMATION IN  
18         A WAY THAT DOESN'T REQUIRE ONE PERSON TO MEMORIZE A WHOLE BUNCH  
19         OF STUFF THAT I'M BEING TOLD IS DIFFICULT OR IMPOSSIBLE OR  
20         IMPRACTICAL FOR ONE PERSON TO MEMORIZE, AND HOPEFULLY IF  
21         THERE'S FOLLOW-UP ON IT, YOU WILL WORK OUT ANY FOLLOW-UP  
22         REASONABLY AND RATIONALLY.

23          MS. WALSH: YOUR HONOR, MAY I ASK THAT MR. CHAPUT AND  
24         I CAN MEET AND CONFER ABOUT A QUICK TIMEFRAME FOR GETTING THIS  
25         DONE? WE HAD -- I THINK WE HAD AGREED, IN CORRESPONDENCE LAST

1 NIGHT, THAT WE WOULD -- THAT META WOULD FIND A WITNESS TO SIT  
2 WITHIN TWO WEEKS OF YOUR ORDER ON THIS MOTION, AND I THINK  
3 WE'VE GOT YOUR ORDER NOW, SO WE WOULD LIKE THIS PROCESS TO  
4 OCCUR WITHIN THE NEXT TWO WEEKS.

5 THE COURT: ANY PROBLEM WITH THAT?

6 MR. CHAPUT: SO WHAT WE WERE SPEAKING ABOUT WITH THAT  
7 TWO-WEEK TIMEFRAME WAS TWO WITNESSES THAT WE HAD PREVIOUSLY  
8 SCHEDULED DEPOSITIONS FOR AND THEN TOOK DOWN BECAUSE PLAINTIFFS  
9 INSISTED ON MOVING FORWARD WITH THIS MOTION INSTEAD.

10 THOSE TWO WITNESSES WERE NOT GOING TO COVER THE CORPORATE  
11 STRUCTURE-RELATED TOPICS WHICH WE ARE DISCUSSING CURRENTLY.

12 THE COURT: SO LET'S BACK UP. SO JUST AT THE GENERAL  
13 QUESTION, HOW MUCH TIME BEFORE YOU THINK YOU WOULD BE READY TO  
14 DO THIS PROCESS?

15 MR. CHAPUT: SO IT'S GOING TO DEPEND ON HOW MANY  
16 QUESTIONS WE GET FROM PLAINTIFFS, YOUR HONOR. I'M HAPPY TO  
17 MEET AND CONFER PROMPTLY WITH PLAINTIFFS ONCE THEY CAN SERVE  
18 THE QUESTIONS. BUT WITHOUT HAVING SEEN THEM, I CAN'T SAY HOW  
19 LONG IT'S GOING TO TAKE ME TO ANSWER THEM.

20 MS. WALSH: I UNDERSTAND, YOUR HONOR.

21 BUT I THINK -- IMAGINE WE HAVE A LIVE WITNESS. I THINK  
22 THAT WE WOULD ASK THAT, GIVEN THE SCHEDULE AND GIVEN OUR NEED  
23 TO MOVE FORWARD WITH THIS, THAT SOME WITNESS WHO WOULD PROVIDE  
24 THIS TESTIMONY FOR THE TOPICS THAT WE'RE DISCUSSING WOULD  
25 APPEAR FOR THAT DEPOSITION WITHIN THE NEXT FOUR WEEKS.

1 AND SO, LIKEWISE, WE WOULD LIKE TO HAVE -- I TAKE  
2 MR. CHAPUT'S POINT REGARDING THE TWO WEEKS. THAT'S VERY FAIR.  
3 BUT WE JUST CANNOT AFFORD TO PROLONG THIS, SO I WOULD ASK  
4 THAT THE WITNESS SIT FOR DEPOSITION BY PROVIDING ANSWERS TO OUR  
5 QUESTIONS WITHIN FOUR WEEKS OF TODAY.

6 THE COURT: OKAY. SO -- THIS REMINDS ME. SO YOU ARE  
7 GOING TO MEET AND CONFER NEXT WEEK, AND THEN I'M GOING TO ORDER  
8 YOU TO FILE A JOINT STATUS REPORT ON THE RESULTS OF THAT MEET  
9 AND CONFER. THIS GOES TO RESOLVING DISPUTES OVER GROUP 3 AND 4  
10 TOPICS IN THE DEPO NOTICE, WHICH I THINK IS 10 AND UNDER.  
11 THESE ARE THE DOCUMENT REQUESTS.

12 MR. CHAPUT: THAT IS CORRECT, YOUR HONOR.

13 THE COURT: IN THAT REPORT, I ALSO WANT YOU TO REPORT  
14 ON THE STATUS OF WORKING OUT THE TIMING FOR THIS WRITTEN  
15 DEPOSITION; RIGHT? AND I DO THINK A MONTH IS PLENTY OF TIME TO  
16 GET IT DONE, MR. CHAPUT.

17 MR. CHAPUT: I WOULD JUST SUBMIT, YOUR HONOR, THAT IT  
18 SHOULD BE A MONTH FROM WHEN WE GET THE QUESTIONS, AS OPPOSED TO  
19 A MONTH FROM TODAY SINCE WE HAVEN'T YET SEEN THOSE QUESTIONS.

20 MS. WALSH: WELL, YOU HAVE THE TOPICS.

21 THE COURT: WELL, HOW QUICKLY DO YOU THINK YOU CAN  
22 GET THEM THE QUESTIONS?

23 MS. WALSH: WITHIN A WEEK.

24 THE COURT: WELL, IT -- IF WE'RE AT THE NEXT CMC IN  
25 JUNE AND THE DEPOSITION HASN'T EVEN BEEN SCHEDULED BY THAT

1 POINT, I'M GOING TO BE VERY UPSET WITH BOTH OF YOU. OKAY? SO  
2 I'M ENCOURAGING BOTH OF YOU TO WORK OUT A SCHEDULE THAT IS  
3 MUTUALLY AGREEABLE, EVEN IF YOU BOTH END UP BEING UNHAPPY ABOUT  
4 IT, BECAUSE OFTEN COMPROMISE INVOLVES EVERYBODY BEING UNHAPPY,  
5 WHICH IS SOMETIMES A GOOD COMPROMISE.

6 SO I'M NOT GOING TO SET A HARD DEADLINE OF A MONTH OR  
7 30 DAYS, JUNE 20TH, BUT I'M GOING TO EXPECT THE DEPOSITION TO  
8 HAVE BEEN SCHEDULED AND HOPEFULLY COMPLETED BY THEN; OR IF NOT,  
9 SCHEDULED WITHIN THE NEXT COUPLE DAYS FROM THAT DMC, BECAUSE I  
10 THINK THAT'S MORE THAN ENOUGH TIME IF SHE -- IF PLAINTIFFS ARE  
11 GOING TO GET YOU THE QUESTIONS WITHIN A WEEK.

12 IF PLAINTIFFS DELAY GETTING THE QUESTIONS TO META, THEN  
13 THAT'S ON YOU.

14 MS. WALSH: OF COURSE. OH, ABSOLUTELY, YOUR HONOR.  
15 WE'RE WILLING TO WORK HARD ON THIS AND MOVE THINGS ALONG.

16 THE COURT: PRESUMABLY SOMEBODY HAS ALREADY STARTED  
17 WORKING ON THE DEPOSITION QUESTIONS.

18 MS. WALSH: YES.

19 THE COURT: ANY QUESTIONS ON HOW WE'RE -- AND THEN I  
20 APPLAUD THE PARTIES AND THANK YOU FOR RESOLVING MOST OF THE  
21 ISSUES HERE, EXCEPT FOR THESE LAST FEW. SO THANK YOU FOR THAT.

22 ANY QUESTIONS ON RESOLUTION OF THIS PARTICULAR LAST  
23 QUESTION?

24 MR. CHAPUT: NO, YOUR HONOR.

25 MS. WALSH: NO, YOUR HONOR.

1                   THE COURT: OKAY. I THINK THAT COVERS ALL THE  
2 MOTIONS THAT WERE ON CALENDAR FOR TODAY, BUT MS. HAZAM IS  
3 GETTING UP TO SAY SOMETHING.

4                   MS. WALSH: THANK YOU, YOUR HONOR.

5                   MS. HAZAM: LEXI HAZAM FOR PLAINTIFFS.

6                   IT DOES, YOUR HONOR.

7                   THERE'S A HOUSEKEEPING MATTER THAT WE WANTED TO ADDRESS  
8 WITH YOUR HONOR, IF WE COULD.

9                   YOUR HONOR HAD ISSUED AN ORDER WITH REGARDS TO COMPLETING  
10 THE MEET AND CONFER ON SEARCH TERMS AND SUBMITTING DISPUTES TO  
11 THE COURT.

12                  THE PARTIES HAVE CONFERRED AND INTEND TO COMPLETE OUR  
13 NEGOTIATIONS BY MAY 31ST, THAT WOULD BE THE DATE BY WHICH WE  
14 WOULD EITHER HAVE AGREEMENT OR IMPASSE ON CERTAIN ISSUES, AND  
15 THEN TO SUBMIT THE DISPUTES BY FIVE BUSINESS DAYS THEREAFTER,  
16 WHICH IS JUNE 7TH.

17                  SO WE WANTED TO REQUEST THE COURT ALLOW US TO PROCEED IN  
18 THAT FASHION.

19                  MS. SIMONSEN: IF I MAY, YOUR HONOR, I DO NOTE THAT  
20 THAT IS -- EXCUSE ME.

21                  ASHLEY SIMONSEN OF COVINGTON & BURLING FOR THE META  
22 DEFENDANTS.

23                  THAT IS TRUE WITH RESPECT TO THE META DEFENDANTS.

24                  I DON'T WANT TO SPEAK FOR THE OTHER DEFENDANTS. I DO NOT  
25 KNOW IF THAT AGREEMENT HAS BEEN REACHED.

1 MR. DRAKE: GEOFFREY DRAKE, KING & SPALDING, FOR  
2 TIKTOK.

3 WE'RE FINE WITH THAT. THANK YOU.

4 MR. RICE: ROWLEY RICE OF MUNGER, TOLLES & OLSEN FOR  
5 SNAP.

6 WE'RE ALSO FINE WITH THAT, YOUR HONOR.

7 MR. KRAMER: ANDREW KRAMER FOR YOUTUBE.

8 WE'RE ALSO FINE WITH THAT.

9 THE COURT: AND IS THAT CONSISTENT WITH YOUR  
10 UNDERSTANDING OF THE STATE OF THINGS?

11 MS. HAZAM: IT IS, YOUR HONOR.

12 THE COURT: OKAY. SO IF IT'S OKAY WITH EVERYBODY, IT  
13 SOUNDS LIKE -- DO YOU NEED A STIPULATION, OR DO YOU NEED ME TO  
14 VERBALLY SAY "SO ORDERED"?

15 MS. HAZAM: PLAINTIFFS WOULD BE COMFORTABLE WITH  
16 SOMETHING ON THE RECORD.

17 MS. SIMONSEN: SAME FOR DEFENDANTS, YOUR HONOR.

18 THE COURT: GIVEN AGREEMENT OF THE PARTIES, IT IS SO  
19 ORDERED.

20 MS. HAZAM: THANK YOU, YOUR HONOR.

21 MS. SIMONSEN: THANK YOU, YOUR HONOR.

22 THE COURT: OKAY. THERE WAS ONE HOUSEKEEPING MATTER,  
23 I'M NOT -- DOCKET NUMBER 848, WE NEED TO SET THE DATE FOR THAT.

24 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE LAW  
25 CLERK.)

1                   THE COURT: DOCKET 848, WHICH IS THE DISCOVERY LETTER  
2                   BRIEF ABOUT YOUTUBE CUSTODIANS, THERE WAS NO UNREDACTED VERSION  
3                   FILED ON THE DOCKET.

4                   MS. HAZAM: I BELIEVE THERE ACTUALLY NOW HAS BEEN,  
5                   YOUR HONOR, BUT I WOULD LIKE -- IF YOUTUBE COUNSEL COULD  
6                   CONFIRM, OR PERHAPS THOSE DEALING WITH IT COULD CONFIRM FROM  
7                   OUR SIDE.

8                   MS. TRUONG: YOUR HONOR, FOR PLAINTIFFS' SIDE, I'M  
9                   NOT SURE ABOUT THE OFFICIAL FILING, BUT I BELIEVE AN UNREDACTED  
10                  VERSION HAD BEEN SUBMITTED TO THE COURT.

11                  THE COURT: WE UNDERSTAND. BUT FOR THE DOCKET -- I  
12                  HAVE AN UNREDACTED EMAILED VERSION, BUT WHAT'S NOT ON THE  
13                  DOCKET IS THE MOTION TO SEAL DIDN'T HAVE THE UNREDACTED VERSION  
14                  SO THAT IT CAN BE PART OF THE RECORD. THAT'S ALL.

15                  MS. MACHOCK: I'LL DOUBLE-CHECK. I BELIEVE WE FILED  
16                  AN UNREDACTED VERSION YESTERDAY.

17                  THE COURT: OKAY. ALL RIGHT. SO ANYWAY, TELL YOUR  
18                  TEAMS TO BE ON TOP OF THINGS THAT NEED TO BE FILED UNDER SEAL.

19                  MS. MACHOCK: ABSOLUTELY.

20                  MS. HAZAM: YES, YOUR HONOR.

21                  MS. MACHOCK: ABSOLUTELY. I BELIEVE WE RETRACTED IT.  
22                  WE WERE GOING TO FILE A SEALING MOTION, AND WE RETRACTED IT.

23                  MS. HAZAM: I BELIEVE I SHARE THE SAME UNDERSTANDING,  
24                  YOUR HONOR.

25                  MR. KRAMER: YOUR HONOR, ANDREW KRAMER FOR YOUTUBE.

1 I BELIEVE THAT THERE WAS AN UNFILED VERSION OF THE LETTER  
2 BRIEF RELATED TO THE RELEVANT TIME PERIOD THAT WAS FILED  
3 UNREDACTED.

4 MY UNDERSTANDING WAS THAT THE MOTION TO SEAL FOR THE  
5 CUSTODIAN-RELATED LETTER BRIEF IS DUE ON WEDNESDAY, THIS  
6 UPCOMING WEDNESDAY.

7 THE COURT: OKAY. THAT'S FINE.

8 ANYWAY, JUST A REMINDER TO BE ON TOP OF THAT KIND OF  
9 THING.

10 MS. WALSH: YOUR HONOR, MAY I JUST CLARIFY ONE POINT?  
11 MY LAWYERS TELL ME I NEED TO CLARIFY SOMETHING, WHICH IS  
12 LOOKING FORWARD TO MEETING AND CONFERRING --

13 THE COURT: YOU ARE A LAWYER.

14 MS. WALSH: I KNOW. THAT'S TRUE, I AM.

15 I'M LOOKING FORWARD TO MEETING AND CONFERRING WITH  
16 MR. CHAPUT REGARDING THE TIMING OF THE DEPOSITION.

17 BUT TO BE CLEAR, WE'RE NOT MEETING AND CONFERRING OVER THE  
18 QUESTIONS. WE WILL BE PROVIDING THE QUESTIONS AND THEY WILL BE  
19 ANSWERING THE QUESTIONS.

20 THE COURT: THAT'S CORRECT.

21 MS. WALSH: OKAY. THANK YOU, YOUR HONOR.

22 THE COURT: ANYTHING FURTHER FOR META?

23 MS. SIMONSEN: JUST ONE HOUSEKEEPING ITEM, YOUR  
24 HONOR.

25 ASHLEY SIMONSEN FOR THE META DEFENDANTS.

1 I SIMPLY WANTED TO NOTE THAT THERE'S BEEN ARGUMENT TODAY  
2 ON RELEVANT TIME PERIOD. I KNOW THAT PLAINTIFFS ARE NOT  
3 PREPARED TO ARGUE THAT ISSUE AS TO META TODAY. WE JUST FILED  
4 OUR BRIEF TODAY, SO I'M NOT SUGGESTING TO ARGUE IT, RESPECTING  
5 THAT THEY ARE NOT PREPARED TO ARGUE IT TODAY.

6 I DID SIMPLY WANT TO NOTE THAT WE DO WISH TO BE HEARD ON  
7 THE RELEVANT TIMEFRAME, BOTH START AND END DATE. THERE ARE  
8 ARGUMENTS THAT WE BELIEVE ARE DISTINCTLY APPLICABLE TO THE META  
9 DEFENDANTS SUCH THAT WHILE WE'LL, OF COURSE, TAKE INTO ACCOUNT  
10 THE GUIDANCE THAT YOUR HONOR PROVIDED TODAY, WE DO BELIEVE THAT  
11 WE SHOULD HAVE SORT OF A FRESH START AND HEARING FROM YOUR  
12 HONOR ON THOSE ISSUES WITH RESPECT TO OUR LETTER BRIEF.

13 MS. WALSH: WE AGREE WHOLEHEARTEDLY THAT THERE ARE  
14 UNIQUE ISSUES THAT WE'LL WANT TO ADDRESS WITH THE COURT WHEN  
15 YOUR HONOR HAS AN OPPORTUNITY TO REVIEW THE BRIEF.

16 THE COURT: ONE OF THOSE RARE SITUATIONS WHERE YOU  
17 AGREE, SO THANK YOU.

18 OKAY. I UNDERSTAND, AND WE'LL -- WELL, IS THERE URGENCY  
19 IN GETTING THAT ON CALENDAR FOR A HEARING?

20 MS. SIMONSEN: I DON'T THINK THERE'S PARTICULAR  
21 URGENCY, AND FRANKLY, I WOULD LIKE TO CONTINUE CONFERRING WITH  
22 PLAINTIFFS' COUNSEL.

23 THE COURT: THAT'S WHY I ASK, BECAUSE YOU'VE HEARD A  
24 LOT OF GUIDANCE AND RULINGS ON SIMILAR ISSUES TODAY. SO MY  
25 SUGGESTION AND PROPOSAL IS THAT YOU MEET AND CONFER KIND OF IN

1 LIGHT OF WHAT TRANSPired TODAY AND SEE IF YOU CAN EITHER REACH  
2 AGREEMENT OR AT LEAST NARROW THE DISPUTES.

3 MS. WALSH: PERHAPS WE CAN ADD IT TO OUR AGENDA FOR  
4 NEXT WEEK.

5 MS. SIMONSEN: THAT SOUNDS GREAT.

6 THE COURT: OKAY. WHY DON'T YOU ADD THAT TO THE  
7 AGENDA FOR NEXT WEEK?

8 MS. WALSH: WE WILL. THANK YOU.

9 MS. SIMONSEN: THANK YOU, YOUR HONOR.

10 THE COURT: ANYTHING FURTHER FROM THE PLAINTIFFS?

11 MS. HAZAM: NO, YOUR HONOR.

12 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

13 MS. SIMONSEN: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. WE'RE ADJOURNED UNTIL  
15 PRESUMABLY THE NEXT DMC.

16 THE CLERK: WE'RE OFF THE RECORD IN THIS MATTER.  
17 COURT IS IN RECESS.

18 (THE PROCEEDINGS WERE CONCLUDED AT 3:51 P.M.)

19

20

21

22

23

24

25

1  
2  
3 CERTIFICATE OF REPORTER  
4  
5  
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED  
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,  
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14  
15 *Lee-Anne Shortridge*  
16

17 LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595  
18 DATED: MAY 25, 2024  
19  
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